

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 210

**J. EARL MORGAN, EXECUTOR OF THE ESTATE
OF ELIZABETH S. MORGAN, DECEASED, PETI-
TIONER,**

vs.

COMMISSIONER OF INTERNAL REVENUE

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT**

PETITION FOR CERTIORARI FILED JULY 19, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.

IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1938.

No. _____

J. EARL MORGAN, EXECUTOR OF THE ESTATE OF
ELIZABETH S. MORGAN, DECEASED,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT.

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TRANSCRIPT OF RECORD

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

No. 6611

J. EARL MORGAN, EXECUTOR OF THE ESTATE OF ELIZABETH
S. MORGAN, DECEASED,

Petitioner,

v.s.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Counsel for Petitioner:

MR. BRODE B. DAVIS,
MR. ARTHUR M. KRACKE.

Counsel for Respondent:

MR. JAMES W. MORRIS,
MR. SEWALL KEY.

Petition for Review of Decision of the United States Board of Tax Appeals.

TRANSCRIPT OF RECORD FILED MAR. 31, 1938.
PRINTED RECORD.

U. S. C. C. A.
FILED

MAY 5 - 1938

FREDERICK G. CAMPBELL

IN THE
United States Circuit Court of Appeals
For the Seventh Circuit

No. 6611

**J. EARL MORGAN, EXECUTOR OF THE ESTATE OF ELIZABETH
S. MORGAN, DECEASED,**

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Counsel for Petitioner:

**MR. BRODE B. DAVIS,
MR. ARTHUR M. KRACKE,**

Counsel for Respondent:

**MR. JAMES W. MORRIS,
MR. SEWALL KEY,**

Petition for Review of Decision of the United States Board of Tax Appeals.

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Docket Entries.

1

1 J. Earl Morgan, Executor of the
Estate of Elizabeth S. Morgan,
Dec'd,

Petitioner,

Docket No. 82771.

vs.

Commissioner of Internal Revenue,

Respondent.

Appearances:

For Petitioner: Arthur M. Kracke, Esq.

For Respondent: H. F. Noneman, Esq., Frank T.
Horner, Esq., R. F. Staubly, Esq.

DOCKET ENTRIES.

1936

Jan. 23—Petition received and filed. Taxpayer notified.
(Fee paid.)

Jan. 23—Copy of petition served on General Counsel.

Mar. 16—Answer filed by General Counsel.

Mar. 19—Copy of answer served on taxpayer.

1937

Mar. 10—Hearing set April 13, 1937.

Apr. 13—Hearing had before C. Rogers Arundell on the
merits. Stipulation of facts filed. Taxpayer's brief due May
28, 1937. Respondent's brief due June 28, 1937. Petitioner's
reply due July 13, 1937.

Apr. 27—Transcript of hearing April 13, 1937 filed.

May 10—Brief filed by taxpayer. 5/10/37 copy served on
General Counsel.

June 25—Brief filed by General Counsel.

July 10—Reply brief filed by taxpayer. Copy served on
General Counsel.

Sept. 30—Opinion rendered—C. R. Arundell, Division 7.
Decision will be entered under Rule 50.

Nov. 1—Motion for a review by the entire Board filed by
taxpayer.

Nov. 10—Order denying review by the entire Board entered.

Nov. 24—Notice of proposed redetermination filed by General
Counsel.

Nov. 30—Hearing set Dec. 15, 1937 on settlement.

Dec. 15—Hearing had before Mr. Van Fossan, Division 9, on settlement under Rule 50—not contested—referred to Mr. Arundell for decision.

Dec. 17—Decision entered—C. R. Arundell, Division 7.

1938

Mar. 9—Petition for review by U. S. Circuit Court of Appeals, Seventh Circuit, with assignments of error filed by taxpayer.

Mar. 9—Proof of service filed by taxpayer.

Mar. 9—Praecipe for record filed—proof of service and agreement endorsed thereon.

UNITED STATES BOARD OF TAX APPEALS.

J. Earl Morgan, Executor of the Estate of Elizabeth S. Morgan, Deceased, <i>Petitioner,</i>	} Docket No. 82771.
<i>vs.</i> Commissioner of Internal Revenue.	

PETITION.

Filed Jan. 23, 1936.

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau Symbols M.T.—E.T.—C1—3099 Wisconsin) dated November 12, 1935, and as a basis for his proceedings alleges as follows:

I. The petitioner, an individual, duly appointed Executor of the Estate of Elizabeth S. Morgan, deceased, on the 6th day of June, 1933, resides at 610 Algoma Boulevard, Oshkosh, Wisconsin. A copy of Letters Testamentary are attached hereto as Exhibit "A" and made a part hereof.

II. The notice of deficiency (a copy of which is attached hereto and marked Exhibit "B") was mailed to the petitioner on November 12, 1935.

III. The taxes in controversy are Federal Estate taxes. The deceased died on May 3, 1933. The deceased was a citizen of the United States and a resident of the State of Wisconsin. The deficiency asserted is \$43,977.93, which, together with any accrued interest, is the amount in controversy.

IV. The determination of the tax set forth in the said notice of deficiency is based upon the following errors:

(a) In determining the gross estate of the decedent, the respondent has erroneously included the value of property over which the decedent was donee, of only a special power of appointment, under the provisions of the Last Will and Testament of Isaac Stephenson, deceased.

(b) In determining the gross estate of the decedent, the respondent has erroneously included the value of property, over which the decedent was donee, of only a special power of appointment, under the provisions of a certain Deed of Trust by Isaac Stephenson to J. A. Van Cleve and others, dated May 12, 1917.

(c) In determining the gross estate of the decedent, the respondent has erroneously included the value of property, over which the decedent was donee, of a power of appointment, under the provisions of the Last Will and Testament of Isaac Stephenson, deceased, which said power of appointment was not a general power of appointment within the meaning of Section 302 of the Revenue Act of 1926.

(d) In determining the gross estate of the decedent, the respondent has erroneously included the value of property, over which the decedent was donee of a power of appointment, under the terms of a certain Deed of Trust by Isaac Stephenson to J. A. Van Cleve and others, dated May 12, 1917, which said power of appointment was not a general power of appointment within the meaning of Section 302 of the Revenue Act of 1926.

(e) In determining the gross estate of the decedent, the respondent has erroneously computed and determined the value of the stock of the Stephenson Redwood Company.

(f) In determining the gross estate of the decedent, the respondent has erroneously determined the value of the land and timber located in Humboldt County, California, which are the only assets of the Stephenson Redwood Company.

(g) In determining the gross estate of the decedent, the respondent has erroneously computed and determined the value of the notes of the Stephenson Redwood Company.

(h) The respondent has erroneously computed and determined the Federal Estate Tax on the estate of the decedent, Elizabeth S. Morgan.

(i) The respondent has failed and refused to allow Executor's Commission as a deduction against the gross estate of the decedent.

(j) The respondent has failed and refused to allow attorney's fees as a deduction against the gross estate of the decedent.

(k) The respondent has failed and refused to allow credit and deduction from the gross estate of the decedent for State estate, inheritance, legacy or succession taxes paid by the petitioner.

V. The facts upon which the petitioner relies as the basis of this proceeding, are as follows:

(a) Under date of June 15, 1916, Isaac Stephenson signed, sealed, published and declared his Last Will and Testament. Under date of June 21, 1916, Isaac Stephenson signed, sealed, published and declared a Codicil to his said Last Will and Testament of June 15, 1916. Under date of January 16, 1917, Isaac Stephenson signed, sealed, published and declared a second Codicil to his Last Will and Testament of June 15, 1916, and the first Codicil of June 21, 1916. Under date of May 15, 1917, Isaac Stephenson signed, sealed, published and declared a third Codicil to his Last Will and Testament of June 15, 1916, the first Codicil of June 21, 1916 and the second Codicil of January 16, 1917.

Isaac Stephenson, the above described testator, died March 15, 1918. He was at the date of his death a citizen and resident of the City and County of Marinette and State of Wisconsin.

On May 7, 1918, Letters Testamentary were issued to J. A. Van Cleve and others, as Executors of the Estate of Isaac Stephenson, deceased. The above described Last Will and Testament of Isaac Stephenson and the first, second and third Codicils of the Last Will and Testament of the said Isaac Stephenson, were on said 7th day of May, 1918, duly admitted to probate in the said deceased's estate by the County Court in and for the County of Marinette, and State of Wisconsin.

The said Last Will and Testament and the first, second and third Codicils thereto of Isaac Stephenson above referred to, are attached hereto as Exhibit "C" and made a part hereof.

Under the provisions of the said Last Will and Testament and Codicils of Isaac Stephenson, described as aforesaid, the testator devised and bequeathed to the appointee or appointees of his daughter, Elizabeth S. Morgan, the decedent herein, certain property, which property was a part of the assets of the estate of the said Isaac Stephenson who predeceased his daughter Elizabeth S. Morgan.

Section 302 of the Revenue Act of 1926 provides in part as follows:

"Sec. 302, Act of 1926. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—"

(f) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of or intended to take effect in possession or enjoyment at or after his death, or (3) by deed under which he has retained for his life, or any period not ascertainable without reference to his death or for any period which does not in fact end before his death (a) the possession or enjoyment of, or the right to the income from, the property, or (b) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and . . ."

The Statutes of the State of Wisconsin provide in part as follows:

"Sec. 232.05 and Sec. 232.06:

Sec. 232.05. General power. A power is general when it authorizes the alienation in fee by means of a conveyance, will or charge of the lands embraced in the power to any alienee whatever.

Sec. 232.06. Special Power. A power is special: (1) When the persons or class of persons to whom the disposition of the lands under the power to be made are designated;

(2) When the power authorizes the alienation by means of a conveyance, will or charge of a particular estate or interest less than a fee."

7 The provisions and terms used and employed by Isaac Stephenson in his said Last Will and Testament created under the Revenue Act of 1926 and the Statutes of the State of Wisconsin, a special power of appointment and not a general power of appointment.

(b) Under date of May 12, 1917, the same Isaac Stephenson described in sub-paragraph (a) immediately preceding, executed a certain Deed of Trust to J. A. Van Cleve and others, a copy of which said Deed of Trust is attached hereto as Exhibit "d" and made a part hereof.

Under the provisions of the aforesaid Deed of Trust of Isaac Stephenson described as aforesaid, the trustor directed the trustees under said Deed of Trust, if Elizabeth S. Morgan should die prior to the termination of the trust, to pay annually

the net income from her part of the trust property to such person or persons as she may appoint by her Last Will and Testament, and at the termination of the trust said trustees were directed to transfer the property in their possession constituting Elizabeth S. Morgan's part of the trust estate to such person or persons as she may appoint. Elizabeth S. Morgan died prior to the termination of the said trust.

The provisions and terms used and employed by Isaac Stephenson in his said Deed of Trust created, under the Revenue Act of 1926, and the Statutes of the State of Wisconsin, a special and not a general power of appointment.

(c) The Commissioner of Internal Revenue has included in the gross estate of the decedent, Elizabeth S. Morgan, her portion of the value of 2000 shares of Stephenson Redwood Co. stock. The entire assets of the said Company consist of a track of redwood timber in Humboldt County, California.

8 The value of the stock of Stephenson Redwood Co. at the date of the death of Elizabeth S. Morgan, as determined by the Commissioner, is greatly in excess of the fair market value of the said land and timber.

9 Based on cruises made by reputable cruisers, the estimated footage of available merchantable timber in the tract in question should not exceed 275,000,000 feet, and based on the value of said footage and the land on the date of the death of Elizabeth S. Morgan, as established by reputable appraisers, the value of the said stock of Stephenson Redwood Co. should not exceed \$100,000.00.

(d) The Commissioner of Internal Revenue has, in arriving at the value of the gross estate of the decedent, included the decedent's proportion of \$184,500.00 of the notes of the Stephenson Redwood Co. The total amount of the said notes exceed the value of the total assets of Stephenson Redwood Co. In addition to including the decedent's proportionate part of the total amount of the notes at full face value, the Commissioner has included, as the decedent's proportion of the stock of Stephenson Redwood Co., an amount greatly in excess of its fair market value. The total value of the Stephenson Redwood Co. notes and stock should not be included in an amount in excess of the total value of the assets of the said corporation.

(e) The estate of the decedent has incurred charges by the executor of said estate and by the attorney for said estate. Allowance has been made by the County Court of Winnebago County, Wisconsin, in which court the said estate is being

administered, for an executor's Commission of \$2,185.64 and Attorney's fees of \$2000.00. The foregoing allowances are proper deductions against the gross estate of the decedent, in computing the Federal Estate Tax.

9 (f) The estate of the decedent has paid inheritance, legacy and succession taxes in the sum of \$8,800.89. The said estate of the decedent is entitled to an inheritance tax credit of not to exceed eighty per cent of the tax imposed by Section 301 of the Revenue Act of 1926.

Wherefore, the petitioner prays that the Board may hear this proceeding and find and determine as follows:

(a) That the power of appointment to the decedent, Elizabeth S. Morgan, contained in the Last Will and Testament of said Isaac Stephenson, deceased, is a special power and not a general power within the intent and meaning of the Statutes of the Wisconsin in such case made and provided and of Section 302 of the Revenue Act of 1926.

(b) That the power of appointment to the decedent, Elizabeth S. Morgan, contained in the Deed of Trust of Isaac Stephenson, dated May 12, 1917, is a special power and not a general power within the intent and meaning of the Statutes of the State of Wisconsin in such case made and provided and of Section 302 of the Revenue Act of 1926.

(c) That there shall not be included in the gross estate of the decedent, Elizabeth S. Morgan, any of the property either income or principal, over which the decedent was given the power of appointment, either under and by reason of the provisions of the Last Will and Testament of Isaac Stephenson, deceased, or under and by reason of the provisions of the Deed of Trust of Isaac Stephenson, both of which instruments are hereinabove more particularly set forth.

(d) That a fair market value of all of the assets of
10 Stephenson Redwood Co. may be ascertained and determined.

(e) That a fair market value of the notes of Stephenson Redwood Co. may be ascertained and determined.

(f) That a fair market value of the stock of Stephenson Redwood Co. may be ascertained and determined.

(g) That in computing the Federal Estate Tax a fair and reasonable amount should be allowed for Executor's Commission and Attorney's fees, as a deduction against the gross estate of the decedent.

(h) That in computing the Federal Estate tax there shall be allowed, as an inheritance tax credit, an amount paid, which

does not exceed eighty per cent of the tax imposed by Section 301 of the Revenue Act of 1926.

(i) That in computing the correct Federal Estate tax the petitioner may have such other and further relief to which the petitioner may be entitled under the Revenue Acts of 1926 and 1932.

Arthur M. Kracke,
Arthur M. Kracke,
Attorney for Petitioner,
209 South LaSalle Street,
Chicago, Illinois.

of Counsel:

Thompson, Gruenewald & Frye,
812 First National Bank Building,
Oshkosh, Wisconsin.

State of Wisconsin, }
County of Winnebago. } ss.

J. Earl Morgan, being first duly sworn says that he is the
Executor of the Estate of Elizabeth S. Morgan, deceased;
11 that he has read the above and foregoing petition; that
he is familiar with the statements therein contained and
that the facts stated therein are true.

(Signed) J. Earl Morgan.

Subscribed and sworn to before me this 20 day of January,
A. D. 1936.

(Seal)

(Signed) M. C. Hansen,
Notary Public.

12

EXHIBIT "A".

STATE OF WISCONSIN, COUNTY COURT, WINNEBAGO COUNTY.

In the Matter of the
Estate of Elizabeth S. Morgan, }
Deceased. }

The State of Wisconsin, To all to Whom These Presents Shall
Come or may concern, and especially to J. Earl Morgan of
the City of Oshkosh, County of Winnebago, in the State of
Wisconsin, Greeting:

Whereas, on the 6th day of June, 1933, the last will and
testament of Elizabeth S. Morgan, deceased, late of the City

of Oshkosh, in said County, was duly allowed and admitted to probate, and

Whereas, you have been appointed by the Court as executor pursuant to the said last will and testament and the order of the Court and the will providing that you shall be exempt from giving bond.

Now, Therefore, Reposing full confidence in your integrity and ability the Court has granted and by these presents does grant the administration of all and singular the goods, chattels, rights, credits and estate unto you, as executor pursuant to said last will and testament and with all the power, authority and privilege conferred, and subject to all the duties, liabilities and penalties imposed by law and the orders, rules and regulations of this Court.

Hereby Conferring upon you the authority and power to take and have possession of all the real and personal estate, except the homestead, of said deceased; to receive the rents and profits thereof until said estate shall have been settled, or until delivered, by order of said Court, to the persons entitled thereto; to demand, collect, recover and receive all and singular the debts, claims, demands, rights and choses in action which to said decedent while living and at the time of her death did belong; and to keep in good tenantable repair all houses, buildings and fences on said real estate which may and shall be under your control; and hereby requiring you to make and return into the said County Court, within three months, a true inventory of all the goods, chattels, rights, credits and estate of said decedent, whether disposed of by will or not, which shall come to your possession or knowledge, or to the possession of any other person for you; to administer, according to law and said last will and testament, all the goods, chattels, rights, credits and estate of said decedent, which shall at any time come to your possession; or to the possession of any other person for you; and out of the same to pay and discharge all debts, legacies and charges chargeable on the same, or such dividends thereon as shall be ordered and decreed by said Court; to render a true and just account of your administration to said Court within one year, and at any other time when required by said Court; and finally to perform all orders and decrees of said Court by you to be performed in the premises.

In Testimony Whereof, I, D. E. McDonald, Judge of said Court, have signed these presents and affixed the seal of the

Court, hereto, at the City of Oshkosh in said County, this 6th day of June, 1933.

D. E. McDonald,
Judge.

(Winnebago County)
(Court)
(Seal)
(Wisconsin)

EXHIBIT "B".

MT-ET-C1—3099-Wisconsin
Estate of—Elizabeth S. Morgan
Date of Death—May 3, 1933

Nov. 12, 1935

J. Earl Morgan, Executor,
610 Algoma Boulevard,
Oshkosh, Wisconsin.

Sir:

A deficiency of \$43,977.93 in the Federal estate tax liability of the above-named estate has been determined after a review of the file in the case and a consideration of the protest against a deficiency proposed in a previous letter from this office. The determination of the deficiency and the action of this office on the protest are fully explained in the attached statement.

This notice of deficiency is given in accordance with the provisions of Section 308 (a) of the Revenue Act of 1926 as amended by Section 501 of the Revenue Act of 1934, and a petition for a redetermination of the deficiency may be filed with the United States Board of Tax Appeals within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter. If you acquiesce in this determination, and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute and forward the enclosed Form 890, waiving the restrictions on the immediate assessment and collection of the deficiency.

The submission of the waiver will expedite the closing of this case and will also benefit the estate by preventing the accumulation of interest charges, as the interest period terminates 30 days after the filing of the waiver or on the date

of assessment, whichever is earlier. The signing of the waiver does not prejudice your right to file a claim for refund of all or any portion of the tax. If you desire to consent to the assessment and collection of only a part of the deficiency, the enclosed form of waiver should be executed in such partial amount.

If within the 90-day period a petition has not been filed with the United States Board of Tax Appeals or the waiver, Form 890, has not been submitted, the deficiency will be thereafter assessed.

Respectfully,

Guy T. Helvering,

Commissioner,

By D. S. Bliss,

Deputy Commissioner.

Enclosures:

Statement,

Waiver, Form 890.

JFM:KRU

14 MT-ET-C1-3099-Wisconsin
Estate of Elizabeth S. Morgan

Statement.

The protest relates to the following:

	Powers of Appointment	Re- turned	Tentatively Determined	Determined
Decedent's 1/7 interest in the estate of Isaac Stephenson as set forth in Bureau letter dated July 6, 1935		\$ 0.00	\$ 41,212.82	\$ 41,212.82
Decedent's 1/8 interest in the Isaac Stephenson Trust as set forth in Bureau letter dated July 6, 1935		0.00	325,613.51	325,613.51

After a careful review of all the evidence of record, it appears that the above items were properly included in the decedent's gross estate, as the decedent had exercised a general power of appointment over each of the trusts in question.

A review of the evidence of record as to the value of the

Stephenson Redwood Company stock, and the notes of the Stephenson Redwood Company, included in the Isaac Stephenson Trust, has been made and it appears that these items were conservatively valued and no adjustments are warranted.

The following computation shows a Federal estate tax liability which is hereby made final:

Gross Estate	\$224,450.39	\$591,741.02	\$591,741.02
Deduction (1926 Act)	116,861.16	112,673.16	112,673.16
Net estate (1926 Act)	\$107,589.23	\$479,067.86	\$479,067.86
Net Estate (1932 Act)	\$157,589.23	\$529,067.86	\$529,067.86
Gross tax (1926 Act)	\$ 1,727.68	\$ 16,453.39	\$ 16,453.39
Credit for State estate, inheritance, legacy, or succession taxes	1,382.14	0.00	0.00
Net tax (1926 Act)	\$ 345.54	\$ 16,453.39	\$ 16,453.39
Total gross taxes (1926 and 1932 Acts)	\$ 10,183.03	\$ 52,778.82	\$ 52,778.82
Gross tax (1926 Act)	1,727.68	16,453.39	16,453.39
Net additional tax	8,455.35	36,325.43	36,325.43
Net tax (1926 Act)	345.54	16,453.39	16,453.39
Total net tax	\$ 8,800.89	\$ 52,778.82	\$ 52,778.82
Total net tax returned			8,800.89
Deficiency			\$ 43,977.93

15 Upon receipt of a waiver or upon the expiration of ninety days from the date of this letter, if a petition is not filed with the Board of Tax Appeals, \$30,815.22 of the deficiency will be assessed. As the balance of the deficiency may be eliminated by credit for State or Territorial estate, inheritance, legacy, or succession taxes, opportunity will be accorded for the submission of the evidence required by Article 9 of Estate Tax Regulations No. 80. If, after a reasonable time, the evidence is not filed, the balance of the deficiency will be assessed. Please advise when the submission of this evidence may be expected.

The deficiency bears interest at the rate of six per cent per

annum from one year after the decedent's death to the date of assessment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is the earlier.

16

EXHIBIT "C".

Know All Men By These Presents, Whereas, It has been my observation that many widows and children have been unable to properly preserve the principal of the fortunes they have inherited, and I desire to provide for the support of my beloved wife, Martha E. Stephenson, and my children and grandchildren, so that my wife shall always have a sufficient income and shall not be wholly dependent upon what she may receive from my estate, and so that my children and grandchildren shall be insured a comfortable living for many years after my death, and also to make ample provision for myself during my life and before the infirmities of old age shall have dulled my intellect;

Now, Therefore, I, Isaac Stephenson, of Marinette, Wisconsin, in consideration of the above premises and in order to accomplish my desires, in consideration of natural love and affection, and for value received, have transferred, assigned, and set over, and by these presents do transfer, assign and set over to such of the following named persons as shall accept in writing, as hereinafter provided, the duties of the trust herein contained; namely, my friends J. A. Van Cleve of Marinette, Wisconsin, and Horace A. J. Upham of Milwaukee, Wisconsin, and my sons-in-law Harry J. Brown of Marinette, Wisconsin, and J. Earl Morgan of Oshkosh, Wisconsin, my son Grant T. Stephenson, and myself, as Trustees as herein provided, the survivor and survivors of them, and their successor and successors in trust, all of the property described and itemized in paragraph number 27 of this instrument, to have and to hold the same from the date hereof and during the continuance of the lives of my wife, Martha E. Stephenson, and myself, and twenty-one years thereafter; all in trust nevertheless to receive, hold, care for and manage the same, and to receive the rents, issues, income and profits thereof, and to apply them to the uses and for the purposes hereinafter provided.

This trust shall become effective upon the acceptance thereof by any three of the persons above named as Trustees.

1. After deducting all taxes, assessments, expenses and other expenditures herein authorized to be paid out of the

annual income of the property held in trust by said Trustees they shall pay monthly, on the 10th day of each month, from the date hereof until my death, to each of the following named persons while living, the sum following his or her name, such payment to cease if he or she shall die before me, namely:

To my wife, Martha E. Stephenson, the sum of Three Hundred Dollars.

To the widow of my son Isaac Watson Stephenson the sum of Two Hundred Dollars, provided always that she shall remain unmarried, and which payment shall cease after her remarriage.

17 To my daughter, Georgianna Ludington, the sum of Two Hundred Dollars.

To my daughter Elizabeth S. Morgan the sum of Two Hundred Dollars.

To my daughter Mary Brown the sum of Two Hundred Dollars.

To my daughter Harriet Augusta Skidmore the sum of Two Hundred Dollars.

To my daughter Maggie Hodgins or to her daughter Margaret Two Hundred Dollars.

To my son Grant T. Stephenson or to his wife Irene E. Stephenson Two Hundred Dollars.

To my grandson Howard S. George One Hundred Dollars.

To my grandson Isaac S. George One Hundred Dollars.

To my friend Maria Sinclair Russell, of Milwaukee, Wisconsin, Twenty-Five Dollars.

To myself the sum of Two Thousand Dollars, upon the 10th of each month, and the balance of the annual income of all of said trust property after the payments of the sums herein directed to be paid therefrom, shall be paid to me annually during my life.

2. Upon my death said Trustees shall divide all the trust property then in their hands, of whatever nature and kind it may be, into nine parts and shall number said parts from one (1) to nine (9), both inclusive, subject to reduction in the number thereof as hereinafter provided.

Said Trustees shall have full power and authority to determine what items of property shall be assigned to each part, and what portions or interests, either divided or undivided, or some divided and some undivided, of said trust property shall constitute each one of the said nine parts into which they shall divide the same. The parts may consist of different kinds of property, but when such division shall have been made, each

one of said parts shall have a value that shall be equal to each of the other of said parts as near as may be in the judgment of said Trustees; and when such division shall have been made and the parts numbered by said Trustees the same shall be final and conclusive as to all parties who may be or become interested therein.

3. After my death and during the life of my wife, Martha E. Stephenson, said Trustees shall pay to her annually the net annual income of part numbered nine (9). Upon the death of my wife part nine (9) shall cease to exist, and whatever may then remain in the hands of said trustees of said part 18 nine (9) they shall transfer and distribute equally among all the then other existing remaining parts into which said Trustees shall have divided said trust property, and thereafter the same shall constitute a portion of said then other existing remaining parts, respectively, the same as if originally a portion thereof, and be held and disposed of the same as is herein provided for the holding and disposal of said then other existing remaining parts.

If my wife, Martha E. Stephenson, shall not survive me, the number of the parts into which the trust property in the hands of said Trustees at the time of my death shall be divided shall be one part less, and there shall be no part numbered nine (9).

4. After my death and during the continuance of the trust hereby created, said Trustees shall pay annually to the children of my son Isaac Watson Stephenson, in equal parts, the net annual income of part numbered eight (8), or themselves expend and use the said net annual income of said part numbered eight (8) for the welfare and support of said children.

Upon the termination of this trust said Trustees shall transfer to the two (2) children of my son Isaac Watson Stephenson, share and share alike, whatever may then remain in the hands of said Trustees of said part eight (8). In the event of the death of either child of my son Isaac Watson Stephenson, its surviving issue, if any, shall take and enjoy what the parent would have taken and enjoyed if living. If there be no such surviving issue, or all such issue shall die, then the other child of my son Isaac Watson Stephenson, if living, and if not living, its surviving issue, shall take and enjoy the same. The surviving issue of each deceased child of my son Isaac Watson Stephenson shall take per stirpes and not per capita what its parent would have taken if living.

If after my death and prior to the termination of this trust, all the children of my son Isaac Watson Stephenson and all

their issue shall have died, then said part eight (8) shall cease to exist, and shall not thereafter be entitled to any additions from any other part, and whatever may then remain in the hands of said Trustees of said part eight (8), they shall transfer to and distribute equally among all of the then other existing remaining parts into which said Trustees shall have divided said trust property, and thereafter the same shall constitute a portion of said then other existing remaining parts, respectively, the same as if originally a portion thereof, and be held and disposed of the same as is herein provided for the holding and disposal of said then other existing remaining parts.

If, prior to my death, all the children of my son Isaac Watson Stephenson and all of their issue shall have died, the
19 number of the parts into which the trust property in the hands of said Trustees at the time of my death shall be divided, shall be one part less, and there shall be no part numbered eight (8).

5. After my death, and during the continuance of the trust hereby created, said Trustees shall pay annually to the children of my daughter Ella J. George, in equal parts, the net annual income of part numbered seven (7), or themselves expend and use the said net annual income of said part numbered seven (7) for the welfare and support of said children.

Upon the termination of this trust said Trustees shall transfer to the two (2) children of my daughter Ella J. George, share and share alike, whatever may then remain in the hands of said Trustees of said part seven (7). In the event of the death of either child of my daughter Ella J. George, its surviving issue, if any, shall take and enjoy what the parent would have taken and enjoyed if living. If there be no such surviving issue, or all such issue shall die, then the other child of my daughter Ella J. George, if living, and if not living, its surviving issue, shall take and enjoy the same. The surviving issue of each deceased child of my daughter Ella J. George shall take per stirpes and not per capita what its parent would have taken if living.

If, after my death and prior to the termination of this trust, all the children of my daughter Ella J. George and all their issue shall have died, then said part seven (7) shall cease to exist, and shall not thereafter be entitled to any additions from any other part, and whatever may then remain in the hands of said Trustees of said part seven (7) they shall transfer to and distribute equally among all the then other existing re-

maining parts into which said Trustees shall have divided said trust property, and thereafter the same shall constitute a portion of said then other existing remaining parts, respectively, the same as if originally a portion thereof, and be held and disposed of the same as is herein provided for the holding and disposal of said then other existing remaining parts.

If prior to my death all the children of my daughter Ella J. George and all their issue shall have died, the number of the parts into which the trust property in the hands of said Trustees at the time of my death shall be divided, shall be one part less, and there shall be no part numbered seven (7).

6. After my death and during the continuance of the trust hereby created, said Trustees shall pay annually to my daughter Georgianna Ludington the net annual income from said part numbered six (6).

If my daughter Georgianna Ludington shall be living
20 at the time of the termination of this trust, said Trustees shall transfer to her all property then in their possession constituting said part six (6).

If my daughter Georgianna Ludington should die prior to the termination of said trust, then said Trustees shall pay annually the net annual income from said part six (6) to such person or persons as she may appoint by her last will and testament duly admitted to probate, and at the termination of this trust said Trustees shall transfer the property then in their possession constituting said part six (6) to such person or persons as she may appoint in the manner aforesaid.

If my daughter Georgianna Ludington, dying as aforesaid, should fail to make such appointment in the manner aforesaid, or making an appointment in the manner aforesaid should fail to dispose of the entire net annual income of said part six (6) or of the property constituting said part six (6) at the termination of said trust, then and in any such event the annual income from said part six (6), or the part thereof not disposed of in the manner aforesaid, shall be paid annually by said Trustees to her issue surviving the time or times respectively when such installments of net annual income shall become payable; and at the termination of said trust, said Trustees shall transfer all the property then in their possession, constituting said part six (6), or the part thereof not disposed of as aforesaid, to the then surviving issue of my said daughter, such issue, taking per stirpes and not per capita, both as to income and principal; Provided, if at any time before the termination of said trust there should be no issue of

my said daughter then surviving, then and in that event any portion of the income of said part six (6), and at the termination of said trust any portion of the principal thereof, not disposed of by my said daughter in the manner aforesaid, shall be by said Trustees transferred to and distributed equally among all the other then existing remaining parts into which said trust property shall have been divided as aforesaid.

In case of the contingency that my daughter Georgianna Ludington should die after my death and prior to the termination of this trust, leaving no issue her surviving, or leaving issue all such issue should die before the termination of this trust, and she shall have failed to make any appointment in the manner aforesaid, then upon the happening of such contingency said part six (6) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and all property constituting said part six (6) in the hands of said Trustees upon the happening of such contingency shall be transferred to and distributed by said Trustees equally among all the then other existing remaining parts into which said Trustees shall have divided said trust property, and thereafter the same shall constitute a portion of said then other existing remaining parts, respectively, the same as if originally a portion thereof, to be held and disposed of accordingly.

21 Should my daughter Georgianna Ludington die prior to my death, leaving no issue surviving her, and without leaving any last will and testament naming therein such appointee or appointees to receive after her death all such property that said Trustees would have paid and transferred to her, as aforesaid, if she had lived, then said Trustees shall divide at the time of my death all the trust property then in their hands into one less part, and there shall be no part numbered six (6).

7. After my death and during the continuance of the trust hereby created, said Trustees shall pay annually to my daughter Elizabeth S. Morgan the net annual income from said part numbered five (5).

If my daughter Elizabeth S. Morgan shall be living at the time of the termination of this trust, said Trustees shall transfer to her all property then in their possession constituting said part five (5).

If my daughter Elizabeth S. Morgan should die prior to the termination of said trust, then said Trustees shall pay

annually the net annual income from said part five (5) to such person or persons as she may appoint by her last will and testament duly admitted to probate, and at the termination of this trust said Trustees shall transfer the property then in their possession constituting said part five (5) to such person or persons as she may appoint in the manner aforesaid.

If my daughter Elizabeth S. Morgan, dying as aforesaid, should fail to make such appointment in the manner aforesaid, or making an appointment in the manner aforesaid should fail to dispose of the entire net annual income of said part five (5) or of the property constituting said part five (5) at the termination of said trust, then and in any such event the annual income from said part five (5), or the part thereof not disposed of in the manner aforesaid, shall be paid annually by said Trustees to her issue surviving the time or times respectively when such installments of net annual income shall become payable; and at the termination of said trust, said Trustees shall transfer all the property then in their possession, constituting said part five (5), or the part thereof not disposed of as aforesaid, to the then surviving issue of my said daughter, such issue taking per stirpes and not per capita, both as to income and principal; Provided, if at any time before the termination of said trust there should be no issue of my said daughter then surviving, then and in that event any portion of the income of said part five (5), and at the termination of said trust any portion the principal thereof, not disposed of by my said daughter in the manner aforesaid, shall be by said Trustees transferred to and distributed equally among all the other then existing remaining parts into which said trust property shall have been divided, as aforesaid.

22 In case of the contingency that my daughter Elizabeth S. Morgan should die after my death and prior to the termination of this trust, leaving no issue her surviving, or leaving issue all such issue should die before the termination of this trust, and she shall have failed to make an appointment in the manner aforesaid, then upon the happening of such contingency said part five (5) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and all property constituting said part five (5) in the hands of said Trustees upon the happening of such contingency shall be transferred to and distributed by said Trustees equally among all the then other existing remaining parts

into which said Trustees shall have divided such trust property, and thereafter the same shall constitute a portion of said then other existing remaining parts, respectively, the same as if originally a portion thereof, to be held and disposed of accordingly.

Should my daughter Elizabeth S. Morgan die prior to my death, leaving no issue surviving her, and without leaving any last will and testament naming therein such appointee or appointees to receive after her death all such property that said Trustees would have paid and transferred to her, as aforesaid, if she had lived, then said Trustees shall divide at the time of my death all the trust property then in their hands into one less part, and there shall be no part numbered five (5).

8. After my death and during the continuance of the trust hereby created, said Trustees shall pay annually to my daughter Mary Brown the net annual income from said part numbered four (4).

If my daughter Mary Brown shall be living at the time of the termination of this trust, said Trustees shall transfer to her all property then in their possession constituting said part four (4).

If my daughter Mary Brown should die prior to the termination of said trust, then said Trustees shall pay annually the net annual income from said part four (4) to such person or persons as she may appoint by her last will and testament duly admitted to probate, and at the termination of this trust said Trustees shall transfer the property then in their possession constituting said part four (4) to such person or persons as she may appoint in the manner aforesaid.

If my daughter Mary Brown, dying as aforesaid, should fail to make such appointment in the manner aforesaid, or making an appointment in the manner aforesaid should fail to dispose of the entire net annual income of said part four (4) or of the property constituting said part four (4) at the termination of said trust, then and in any such event the annual income from said part four (4), or the part thereof not disposed of in the manner aforesaid, shall be paid annually by said Trustees to her issue surviving the time or times respectively when such installments of net annual income shall become payable; and at the termination of said trust, said Trustees shall transfer all the property then in their possession, constituting said part four (4), or the part thereof not disposed of as aforesaid, to the then surviving

issue of my said daughter, such issue taking per stirpes and not per capita, both as to income and principal; Provided, if at any time before the termination of said trust there should be no issue of my said daughter then surviving, then and in that event any portion of the income of said part four (4), and at the termination of said trust any portion of the principal thereof, not disposed of by my said daughter in the manner aforesaid, shall be by said Trustees transferred to and distributed equally among all the other then existing remaining parts into which said trust property shall have been divided, as aforesaid.

In case of the contingency that my daughter Mary Brown should die after my death and prior to the termination of this trust, leaving no issue her surviving, or leaving issue all such issue should die before the termination of this trust, and she shall have failed to make any appointment in the manner aforesaid, then upon the happening of such contingency said part four (4) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and all property constituting said part four (4) in the hands of said trustees upon the happening of such contingency shall be transferred to and distributed by said Trustees equally among all the then other existing remaining parts into which said Trustees shall have divided said trust property, and thereafter the same shall constitute a portion of said then other existing remaining parts, respectively, the same as if originally a portion thereof, to be held and disposed of accordingly.

Should my daughter Mary Brown die prior to my death, leaving no issue surviving her, and without leaving any last will and testament naming therein such appointee or appointees to receive after her death all such property that said Trustees would have paid and transferred to her, as aforesaid, if she had lived, then said Trustees shall divide at the time of my death all the trust property then in their hands into one less part, and there shall be no part numbered four (4).

9. After my death and during the continuance of the trust hereby created, said Trustees shall pay annually to my daughter Harriet Augusta Skidmore the net annual income from said part numbered three (3).

• If my daughter Harriet Augusta Skidmore shall be living at the time of the termination of this trust, said Trustees shall transfer to her all property then in their possession constituting said part three (3)

24 If my daughter, Harriet Augusta Skidmore should die prior to the termination of said trust, then said Trustees shall pay annually the net annual income from said part three (3) to such person or persons as she may appoint by her last will and testament duly admitted to probate, and at the termination of this trust said Trustees shall transfer the property then in their possession constituting said part three (3) to such person or persons as she may appoint in the manner aforesaid.

If my daughter Harriet Augusta Skidmore, dying as aforesaid, should fail to make such appointment in the manner aforesaid, or making an appointment in the manner aforesaid should fail to dispose of the entire net annual income of said part three (3) or of the property constituting said part three (3) at the termination of said trust, then and in any such event the annual income from said part three (3), or the part thereof not disposed of in the manner aforesaid, shall be paid annually by said Trustees to her issue surviving the time or times respectively when such installments of net annual income shall become payable; and at the termination of said trust, said Trustees shall transfer all the property then in their possession, constituting said part three (3); or the part thereof not disposed of as aforesaid, to the then surviving issue of my said daughter, such issue taking per stirpes and not per capita, both as to income and principal: Provided, if at any time before the termination of said trust there should be no issue of my said daughter then surviving, then and in that event any portion of the income of said part three (3) and at the termination of said trust any portion of the principal thereof, not disposed of by my said daughter, in the manner aforesaid, shall be by said Trustees transferred to and distributed equally among all the other then existing remaining parts into which said trust property shall have been divided, as aforesaid.

In case of the contingency that my daughter Harriet Augusta Skidmore should die after my death and prior to the termination of this trust, leaving no issue her surviving, or leaving issue all such issue should die before the termination of this trust, and she shall have failed to make any appointment in the manner aforesaid, then upon the happening of such contingency said part three (3) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and all property constituting said part three (3) in the hands of said Trustees upon the happening of such con-

tingency shall be transferred to and distributed by said Trustees equally among all the then other existing remaining parts into which said Trustees shall have divided said trust property, and thereafter the same shall constitute a portion of said then other existing remaining parts, respectively, the same as if originally a portion thereof, to be held and disposed of accordingly.

Should my daughter Harriet Augusta Skidmore die prior to my death, leaving no issue surviving her, and without
25 leaving any last will and testament naming therein such appointee or appointees to receive after her death all such property that said Trustees would have paid and transferred to her, as aforesaid, if she had lived, then said Trustees shall divide at the time of my death all the trust property then in their hands into one less part, and there shall be no part numbered three (3).

10. After my death and during the continuance of the trust hereby created, said trustees shall pay annually to my daughter Maggie Hodgins the net annual income from said part numbered two (2).

If my daughter Maggie Hodgins shall be living at the time of the termination of this trust, said Trustees shall transfer to her all property then in their possession constituting said part two (2).

If my daughter Maggie Hodgins should die prior to the termination of said trust, then said Trustees shall pay annually the net annual income from said part two (2) to such person or persons as she may appoint by her last will and testament duly admitted to probate, and at the termination of this trust said Trustees shall transfer the property then in their possession constituting said part two (2) to such person or persons as she may appoint in the manner aforesaid.

If my daughter Maggie Hodgins, dying as aforesaid, should fail to make such appointment in the manner aforesaid, or making an appointment in the manner aforesaid should fail to dispose of the entire net annual income of said part two (2) or of the property constituting said part two (2) at the termination of said trust, then and in any such event the annual income from said part two (2), or the part thereof not disposed of in the manner aforesaid, shall be paid annually by said Trustees to her issue surviving the time or times respectively when such installments of net annual income shall become payable; and at the termination of said trust, said Trustees shall transfer all the property then in their posses-

sion, constituting said part two (2), or the part thereof not disposed of as aforesaid, to the then surviving issue of my said daughter, such issue taking per stirpes and not per capita, both as to income and principal; Provided, if at any time before the termination of said trust there should be no issue of my said daughter then surviving, then and in that event any portion of the income of said part two (2) and at the termination of said trust any portion of the principal thereof, not disposed of by my said daughter in the manner aforesaid, shall be by said Trustees transferred to and distributed equally among all the other then existing remaining parts into which said trust property shall have been divided, as aforesaid.

In case of the contingency that my daughter Maggie Hodgins should die after my death and prior to the termination of this trust, leaving no issue her surviving, or
26 leaving issue all such issue should die before the termination of this trust, and she shall have failed to make any appointment in the manner aforesaid, then upon the happening of such contingency said part two (2) shall fail to exist and shall not thereafter be entitled to any additions from any other part, and all property constituting said part two (2) in the hands of said Trustees upon the happening of such contingency shall be transferred to and distributed by said Trustees equally among all the then other existing remaining parts into which said Trustees shall have divided said trust property, and thereafter the same shall constitute a portion of said then other existing remaining parts, respectively, the same as if originally a portion thereof, to be held and disposed of accordingly.

Should my daughter Maggie Hodgins die prior to my death, leaving no issue surviving her, and without leaving any last will and testament naming therein such appointee or appointees to receive after her death all such property that said Trustees would have paid and transferred to her, as aforesaid, if she had lived, then said Trustees shall divide at the time of my death all the trust property then in their hands into one less part, and there shall be no part numbered two (2).

11. After my death and during the continuance of the trust hereby created, said Trustees shall pay annually to my son Grant T. Stephenson the net annual income from part numbered one (1).

If my son Grant T. Stephenson shall be living at the time

of the termination of this trust, said Trustees shall transfer to him all property then in their possession constituting said part one (1).

If my son Grant T. Stephenson should die prior to the termination of said trust, then said Trustees shall pay annually the net annual income from said part one (1) to such person or persons as he may appoint by his last will and testament duly admitted to probate, and at the termination of this trust said Trustees shall transfer the property then in their possession constituting said part one (1) to such person or persons as he may appoint in the manner aforesaid.

If my son Grant T. Stephenson, dying as aforesaid, should fail to make such appointment in the manner aforesaid, or making an appointment in the manner aforesaid should fail to dispose of the entire net annual income of said part one (1) or of the property constituting said part one (1) at the termination of said trust, then and in any such event the annual income from said part one (1), or the part thereof not disposed of in the manner aforesaid, shall be paid annually by said Trustees to his issue surviving the time or times respectively when such installments of net annual income shall become payable; and at the termination of said trust, said Trustees shall transfer all the property then in their possession, constituting said part one (1), or the part thereof not disposed of as aforesaid, to the then surviving issue of

27 my said son, such issue taking per stirpes and not per capita, both as to income and principal: Provided, if at any time before the termination of said trust there should be no issue of my said son then surviving; then and in that event any portion of the income of said part one (1) and at the termination of said trust any portion of the principal thereof, not disposed of by said son in the manner aforesaid, shall be by said Trustees transferred to and distributed equally among all the other then existing remaining parts into which said trust property shall have been divided, as aforesaid.

In the case of the contingency that my son Grant T. Stephenson should die after my death and prior to the termination of this trust, leaving no issue him surviving, or leaving issue all such issue should die before the termination of this trust, and he shall have failed to make any appointment in the manner aforesaid, then upon the happening of such contingency said part one (1) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and all property constituting said part one (1) in the hands

of said Trustees upon the happening of such contingency shall be transferred to and distributed by said Trustees equally among all the then other existing remaining parts into which said Trustees shall have divided said trust property, and thereafter the same shall constitute a portion of said then other existing remaining parts, respectively, the same as if originally a portion thereof, to be held and disposed of accordingly.

Should my son Grant T. Stephenson die prior to my death, leaving no issue surviving him, and without leaving any last will and testament naming therein such appointee or appointees to receive after his death all such property that said Trustees would have paid and transferred to him, as aforesaid, if he had lived, then said Trustees shall divide at the time of my death all the trust property then in their hands into one less part, and there shall be no part numbered one (1).

12. Said Trustees are authorized to make, if they deem best, payments from time to time in any year to any beneficiaries of this trust on account of what shall be coming to such beneficiary out of the net annual income for that year of any part of the trust property, prior to the time when such net income shall be definitely determined; and when such net annual income shall have been determined and collected, the said Trustees shall pay the balance, if any, due to such beneficiaries.

13. Whenever an infant shall be entitled to any income, said Trustees are authorized to accumulate during the minority of such infant so much of such income as said Trustees may deem unnecessary to expend for its welfare and support. In case of the accumulation of such income, said Trustees shall pay to such infant the amount of such accumulation upon its reaching the age of majority, or at the expiration of this trust, if this trust shall terminate before such infant shall attain its majority.

14. In case of the death of any person entitled to any income from any of the parts into which the trust property shall have been divided, said Trustees shall pay to the estate of such persons so deceased what said Trustees shall determine to be due out of the net annual income of said parts in which such person shall be interested up to the time of such person's death.

15. Whenever, in the judgment of said Trustees, there shall be danger that any portion or portions of the trust prop-

erty coming to any beneficiary under this trust, whether income or corpus, as hereinbefore provided, will be dissipated or improvidently handled through intemperate or spendthrift habits, lack of business capacity, or subjection to the injurious influences of others affecting business capacity, or for any other reason or reasons, said Trustees shall withhold, if they deem it best, from every such beneficiary the whole or any and each portion of the trust property, whether of income or corpus, coming to such beneficiary as unworthy to receive the same, and said Trustees shall pay and transfer to every such beneficiary only so much of said trust property, whether of income or corpus, otherwise coming to such beneficiary, as said Trustees shall deem advisable. Said trustees shall, if they deem it best, instead of paying and transferring to any such beneficiary or beneficiaries any portion of said trust property, whether of income or corpus, expend the same, or any portion thereof, for the welfare and support of such unworthy beneficiary or beneficiaries.

Whatever shall have been once withheld, as above provided, from any such unworthy beneficiary under this trust and shall not have been expended by such Trustees for the benefit and support of such unworthy beneficiary, shall be paid and transferred by said Trustees to such of his or her issue as would have taken the property so withheld, both income and corpus, in case such unworthy beneficiary had died intestate at the time of such withholding; and in the event of there being no such issue at the time any such trust property shall be payable or transferable, then said Trustees shall pay and transfer and distribute such property so withheld to and among the then other existing remaining parts.

Whenever, and while in the judgment of said Trustees the reason or reasons for withholding the portion or portions thereof of any beneficiary, as above provided, shall have ceased to exist, then during such cessation said Trustees may pay and transfer to such beneficiary any portion or portions of said trust property, whether income or corpus, that shall thereafter be coming to such beneficiary under any of the provisions of this trust, or said Trustees shall expend the same for the benefit or support of such beneficiary.

16. For the period of ten years after the date hereof, said Trustees are recommended, but not commanded, not to cause the red wood lands situated in the state of California, now owned by the Stephenson Redwood Company, to be sold or

disposed of, and during said period of ten years not to
29 sell or dispose of any of the shares of the capital stock
of said corporation last mentioned, and, so far as possible,
to vote all such shares of stock and so manage the affairs
of said corporation last mentioned as to keep and preserve
during the period of ten years from the date hereof all
of said redwood lands.

17. Said Trustees are authorized to organize or cause to
be organized, a corporation or corporations under the laws of
the state of Wisconsin, and for any of the purposes specified
in any such laws, and also under the laws of any of the states
or territories of the United States, and for any of the purposes
specified in any such laws, and also to join with any
other person or persons in the organization of any such corporation,
and also to subscribe for and take stock in such corporation
and to pay over or transfer to any such corporation or corporations
any money or property in the hands of said Trustees as the consideration
for the stock of any such corporation or corporations.

18. In case of the receipt by said Trustees from any corporation,
partnership, syndicate, trust, association or any other concern
of any dividend or distribution of money or property, said Trustees
shall examine into the sources of such money or property, or both,
so received, and determine whether the same has been derived from
earnings made by such corporation, partnership, syndicate, trust,
association, or other concern, after the date hereof, or has been
derived from its capital assets, including surplus and undivided
profits possessed by it at the time of the date thereof. So much
of every such dividend or distribution as said Trustees shall determine
to have been derived from earnings made after the date hereof shall
be distributed among the beneficiaries of this trust as income, and
so much thereof as said Trustees shall determine to have been derived
from such capital assets, surplus and undivided profits shall be retained
by said Trustees as corpus or principal of the trust property. The
decision of said Trustees in determining how much of every dividend
or distribution of money and property, as aforesaid, shall be considered
as income and how much thereof shall be considered corpus, shall be
final and conclusive.

19. Said Trustees are authorized to deal with and make contracts
and agreements with and in regard to and loan money to, with or
without security, and take additional stock or interest in, and purchase
and acquire all the property, or

any part thereof, of any corporation, syndicate, trust, partnership, association, estate, or other concern in which said Trustees, as such, or I, or the executors or trustees of my will, may be interested, either as a stockholder, owner, creditor, contributor, manager, or otherwise and notwithstanding the fact that said Trustees, or some one or more of them, may also have a personal or representative interest in such corporation, syndicate, trust, partnership, association, estate, or other concern, or be a director or directors, trustee or trustees, executor or executors, agent or agents, or an officer or officers thereof; such contracts, agreements, loans and subscriptions for additional stock or interest, purchases and acquisition of property, to be upon such terms and conditions, and for such length of time, and at such rate of interest as said Trustees shall deem best; the authority and power of said Trustees with reference to such contracts, agreements, loans and subscriptions for additional stock or interest, and the purchase or acquisition of property to be as full, extensive and complete as those which I would possess and could exercise in respect thereto if I still were the owner of said trust property.

Said Trustees are given full power to make contracts with any other person, agent, trustee or officer, or stockholder or shareholder of any such corporation, syndicate, trust, partnership, association, estate, or other concern, in regard to any of the affairs thereof, the same as I could do if I still were the owner of said trust property.

20. Said Trustees are given the entire management and control of all the trust property hereby transferred, assigned and set over to them and which they may hereafter acquire, the same as I could do if I were the sole owner thereof. Said Trustees are authorized to sell, negotiate, exchange, hypothecate and pledge any and all personal property as they shall deem best; also to invest, re-invest and keep invested all moneys that shall come in any way into their hands and which they are not otherwise directed to dispose of. They are authorized to change from time to time all investments, converting realty into personalty and personalty into realty, as they shall deem best, and to collect and receive the principal as well as the income of all investments and other property coming into their hands, with authority to make investments in real estate by purchase or otherwise, and in the certificates, stocks, notes, bonds or other obligations of corporations, either private, public or municipal, associations, trusts and

individuals, and whether or not such certificates, stocks, notes, bonds, or other obligations be secured or unsecured, as they shall deem best. Said Trustees are given full authority to execute all deeds, mortgages, leases, releases, assignment, declarations, contracts, notes, bonds and other written instruments necessary, suitable or convenient, as they shall deem best to carry out the provisions of this instrument.

Said Trustees are authorized to purchase, acquire and hold real estate, and any interest therein, and to sell, convey, lease, and mortgage all real estate, and any and every part thereof, and any interest therein, upon which terms and conditions and for such prices and for periods of time, for cash or deferred payments, or partly both, and either at public or private sale, and to accept such securities and other property in payment thereof, all as said Trustees may deem best.

31 Said Trustees are authorized to collect and receive rents, profits and issues of all trust property, real and personal, in their care, and all money and property coming from the selling, leasing, mortgaging or other disposal of any and every portion thereof. They are authorized to build, rebuild upon and otherwise improve real estate and any and every portion thereof, and interest therein, and to repair and otherwise improve any building thereupon, as they shall deem best.

Said Trustees are given full authority to compromise, compound and otherwise settle any claim or claims whatsoever due them, or made against them, by anyone whomsoever, and whether any such claim is capable of being enforced in any court or not, all in such manner as said Trustees shall deem best; also with authority to submit to arbitrators selected as said Trustees may deem best any matter or controversy concerning any of said trust property in their care, and to carry out the decision of such arbitrators and to appeal therefrom; also with authority to extend the time of payment of any and every indebtedness due them from time to time as they see fit; and said Trustees shall not be held liable in case of the loss of any such part or portions thereof by reason of any such extensions. Said Trustees are not expected to convert the stocks, bonds, notes, mortgages and other securities hereby transferred to them into cash, or to enforce the collection of any loans made by me, unless said Trustees deem it best so to do. Said Trustees, and no one of them, shall be held individually liable for any depreciation after the date hereof in value of any part of said trust property, however or when-

ever acquired, or for any other loss thereto, in case they shall deem it best not to convert any of the trust property into cash, or not to enforce the collection of any loans made by me or by them.

The powers enumerated in this item are not intended to revoke, limit or modify the other specific directions contained in this instrument.

21. Each of said Trustees shall be reasonably compensated for the services rendered by him.

Said Trustees are authorized to employ agents and attorneys to aid them, and to incur all expenses that are necessary or reasonable for the management and care of the trust property.

Out of the annual income of the whole trust property during each year of my life, said Trustees shall pay such of the following expenditures as shall belong to such year, so as to obtain the net annual income for the year, to-wit: All taxes and assessments, general and special, license fees, expenses of the management and care of the trust property, salaries and charges of agents and attorneys employed by them; reasonable compensation to each of said Trustees, all repairs to property; costs of abstracts; commissions; premiums for insuring the fidelity of employees and others, and insuring the trust property against loss by fire, and any other casualty, and against claims by others against said Trustees and said trust property for accidents to life and property; and

32 all other suitable and proper expenditures and disbursements relating to the management and care of said trust property, and to enable said Trustees to perform their duties.

After my death the net annual income of each part into which said trust estate shall have been divided, shall be obtained by deducting from the annual income of each part all the expenditures above enumerated that are chargeable for the year to such part.

Should there be in any year any extraordinary expenditure for any of the above matters, said Trustees are authorized to distribute such extraordinary expenditure over a series of years to be fixed by said Trustees, so that not to diminish too much the net income for any one year, and for such purpose said Trustees are authorized to pay such extraordinary expenditures, or portions thereof, out of corpus to be repaid corpus out of the income of the succeeding year or years of such series.

22. The survivors and survivor, and successors and successor in trust of said Trustees, and such of them as shall act under this trust, shall, respectively, have and enjoy all the powers, duties, privileges, rights, exemptions and the right to use his or their discretion in certain matters that are specifically given to said Trustees respectively named in this trust, the same as if the words "the survivors and survivor of them, their successors or successor in trust, and such of them as shall act under this trust" had been inserted in this instrument next after the word "trustees" in every instance where such word "trustees" is used in this instrument.

23. No Trustee acting under this trust shall be held personally liable for any of the acts or defaults of any co-trustee. So long as any Trustee under this trust shall have acted honestly and in good faith, he shall not be liable in any way to any beneficiary thereof for any loss or damage that may arise or grow out of any of his acts as such Trustee.

24. In order for any person named as Trustee upon the first page hereof to qualify and become a Trustee empowered to act as such hereunder, he shall evidence his acceptance of said trust by executing and acknowledging the acceptance hereto appended.

25. Whenever there shall be a vacancy, as hereinafter defined, in the number of Trustees acting under this trust, the remaining acting Trustees shall appoint in writing, duly witnessed, sealed and acknowledged as deed are required to be so as to be entitled to be recorded under the laws of Wisconsin, some person to fill such vacancy. Such appointment may be annulled in the same way any time before it shall have been accepted. The acceptance of such appointment must be

in writing, signed, sealed, witnessed and acknowledged as
33 deeds are required to be in order to be recorded under the laws of Wisconsin, and no such appointment shall take effect or have force until after such appointment shall have been approved by the Judge of the Circuit Court of Marinette County, Wisconsin, and shall have been filed in the office of the Clerk of said Court.

Any Trustee may at any time resign his office as Trustee, provided all the remaining then acting Trustees shall unanimously accept such resignation. Such resignation must be in writing, signed, sealed, witnessed and acknowledged as deeds are required to be in order to be recorded, as aforesaid. No such resignation shall take effect or have any force

until after the Trustee wishing to resign shall have executed and delivered to the other than acting Trustees a full and proper conveyance of all his interest in all the trust property, and until after such resignation shall have been approved by the Judge of the Circuit Court of Marinette County, Wisconsin, and shall have been filed in the office of the Clerk of said Court.

During my lifetime the number of Trustees of the trust hereby created shall be six (6), and after my death the number of said Trustees shall be five (5). There shall be a vacancy in the number of Trustees whenever the number of such acting Trustees is less than six or five, as above stated. A vacancy may be caused by death, resignation, incompetency, insolvency, or neglect to perform the duties of Trustee, or failure of any of the persons named as Trustee upon the first page hereof to accept such trust prior to my death and within two years from the date hereof. In case of the incompetency or insolvency of any Trustee, or neglect of any Trustee to perform the duties of Trustee, the Circuit Court of Marinette County, Wisconsin, may create a vacancy by removing from office any such incompetent or insolvent Trustee, or Trustee neglecting his duties. In case of the threatened insolvency of any Trustee, such Court may require such Trustee to give suitable bond to protect the trust property.

Whenever the number of acting Trustees shall be less than three (3), such acting Trustees or Trustee shall perform no duties under this trust except those of appointing some person or persons to fill such vacancy or vacancies, and of collecting money payable to the Trustees, and disbursing money owing by the Trustees, and preserving the trust property. Whenever the number of such acting Trustees is three (3) or more, such acting Trustees may perform all the duties of Trustees under this trust.

The name of this trust shall be "Isaac Stephenson Trust," and the Trustees are authorized to use this name in their transactions. The decision of the majority of the acting Trustees at any time shall be taken as the decision of and be binding upon all the Trustees, and the doing of any act in pursuance of the decision of and by the majority of such acting

Trustees, shall be of the same force and effect as if said
34 act was done by all such Trustees. Such decision of the majority may be evidenced by some written instrument, signed by the majority of such acting Trustees. Any deed,

contract, or other instrument duly executed by a majority of the Trustees acting at the time, shall have the same force and effect as though executed by all the Trustees at such time.

26. The word "issue" wherever used in this instrument shall be construed to mean all lawful descendants to the remotest degree, such descendants to be determined according to the laws of Wisconsin, and to be limited to the heirs of the body of the ancestor named.

27. The following is an itemized description of all the property mentioned on the first page of this instrument, and hereby transferred, assigned and set over to said Trustees, to-wit:

Bonds of the United States of America, Panama Canal, Registered 3%, dated October 29, 1912:	
Par value	\$100,000.00
Bonds of Government of Philippine Islands, Registered 4%, dated February 1, 1910, par value..	
Dated January 21, 1910, par value.....	25,000.00
Dated December 11, 1909, par value.....	25,000.00
Bonds of United States of America, 3% Loan of 1898, Registered, dated December 14, 1909, par value	
Dated February 1, 1910, par value.....	50,000.00
Bonds of United States of America, 4% of 1895, Registered, dated May 1, 1903, par value.....	
Dated April 15, 1910, par value.....	17,000.00
Dated May 2, 1910, par value.....	100,000.00
Dated May 1, 1910, par value.....	50,000.00
Dated Jan. 12, 1912, par value.....	50,000.00
Bonds of Government of The Dominion of Canada, 5% Coupon, dated April 1, 1916, par value.....	
Bonds of United Kingdom of Great Britain and Ireland, 5½% Coupon, dated November 1, 1916, par value	100,000.00
Dated February 1, 1917, par value.....	50,000.00
Bonds of County of Sacramento, California, roads and highways, 4½%, dated July 1, 1908, par value	
Bonds of Milwaukee County Home for Dependent Children, 4½%, dated October 15, 1912, par value	20,000.00
Bonds of Milwaukee County House of Correction, 4½% dated August 5, 1914, par value.....	46,000.00
City of Milwaukee Sewerage Bonds, 4½% dated July 1, 1915, par value.....	15,000.00
	50,000.00

Exhibit C.

35

City of Milwaukee Park Bond, 4½%, dated January 1, 1915, par value.....	5,000.00
City of Milwaukee School Bonds, 4½%, dated January 1, 1915, par value.....	30,000.00
35 West Chicago Park 4% Bonds, dated April 1, 1906, par value.....	6,000.00
City of London, Ontario, 5% Bonds dated February 1, 1916, par value.....	25,000.00
Chicago Union Station 4½% Bonds, dated January 1, 1916, par value.....	75,000.00
Chicago Railway Company, 5% Bonds, dated February 1, 1907, par value.....	25,000.00
Peoples Gas Light & Coke Company, 5% Bonds dated September 1, 1897, par value.....	50,000.00
St. Louis, Peoria & Northwestern Railway Company 5% Bonds dated July 1, 1913, par value..	100,000.00
Kansas City Terminal Railway Company, 4% Bonds, dated January 3, 1910, par value.....	25,000.00
2,000 shares of stock of the Wells Building Company, par value.....	200,000.00
Certificates of I. Stephenson Co. Trustees for beneficial interest of 27,886½ parts out of 80,000 parts of trust created by trust agreement dated July 5, 1912; as amended by supplemental agreement dated March 19, 1912; no par value.	
2,471 shares of stock of the Marinette & Menominee Paper Company, par value.....	247,100.00
200 shares of stock of the Stephenson Charcoal Iron Co., par value.....	5,000.00
32.1375 shares of stock of the Ludington, Wells & Van Schaick Co., par value.....	321.38
3,413 shares of the Ludington, Wells & Van Schaick Lumber Co., par value.....	3,413.00
358 shares of stock of the Menominee & Marinette Heat, Light & Traction Co., par value.....	35,800.00
250 shares of stock of the Reno Realty Company, par value	25,000.00
2,000 shares of stock of the Stephenson Redwood Company, par value.....	200,000.00
60 shares of stock of the Ionic Company, par value	6,000.00
2,788.65 shares of stock of the I. Stephenson Lumber Co., 75% of par paid in—par value \$1.00 per share—paid in value.....	2,091.48
69.7 shares of stock of the I. Stephenson Company, par value	697.00

7,999 shares of stock of the Escanaba River Company, par value.....	7,999.00
53,326 shares of stock of the Ford River Lumber Company, par value.....	1,333.15
438 shares of stock of The H. Witbeck Company, par value	438.00
Promissory notes of the Wells Building Company, upon which there is unpaid principal to the amount of	17,900.00
36 Promissory notes of the I. Stephenson Co. Trustees,	
Nos. 151 292 361 479	
" 154 316 439 465	
" 194 348 440 466	
" 195 349 449 467	
" 196 350 450 513	
" 262 351 451 540	
" 263 352 452 541	
" 283 353 453 545	
" 284 354 454 546	
" 285 356 469 547	
" 286 357 471 549	
" 289 358 472 552	
" 290 359 473 553	
" 291 360 478	par value.....\$552,000.00

In Witness Whereof, I, Isaac Stephenson, have hereunto set my hand and seal this 12th day of May, A. D. 1917, at Marinette, Wisconsin.

Isaac Stephenson (Seal)

Signed, sealed and delivered by Isaac Stephenson in the presence of:

N. O. Borndahl,
W. E. Black.

State of Wisconsin }
County of Marinette } ss.

Personally came before me this 12th day of May A. D. 1917, the above named Isaac Stephenson, to me known to be the person who executed the foregoing instrument, and acknowledged the same.

(Seal)

Nicholas O. Borndahl,
Notary Public, Marinette County,
Wisconsin.

My commission expires May 30, 1920.

Now Come Isaac Stephenson, J. A. Van Cleve, Horace A. J. Upham, Harry J. Brown, and severally accept the trust created by the above and foregoing instrument of trust, and do hereby acknowledge the receipt by them in their capacity as Trustees of said trust of all and singular the property therein particularly described.

In Witness Whereof, we have hereunto set our hands and seals this 12th day of May, A. D. 1917, at Marinette, Wisconsin.

Isaac Stephenson (Seal)
J. A. Van Cleve (Seal)
Horace A. J. Upham (Seal)
Harry J. Brown (Seal)

37 Signed, sealed and delivered in presence of:

N. O. Borndahl,
W. E. Black,
H. C. Hornibrook.

State of Wisconsin }
County of Marinette } ss.

Personally came before me this 12th day of May, A. D. 1917, the above named Isaac Stephenson, J. A. Van Cleve, Horace A. J. Upham, Harry J. Brown, to me known to be the persons who executed the foregoing instrument, and severally acknowledged the same.

(Seal) Nicholas O. Borndahl,
Notary Public, Marinette County,
Wisconsin.

My commission expires May 30, 1920.

Now Comes J. Earl Morgan and accepts the trust created by the above and foregoing instrument of trust.

In Witness Whereof, I have hereunto set my hand and seal this 15th day of May, A. D. 1917, at Marinette, Wis.

J. Earl Morgan (Seal)

Signed, sealed and delivered in presence of:

M. C. Hansen,
Anna Seanor,
H. C. Hornibrook.

EXHIBIT "D."

Know All Men By These Presents, That I, Isaac Stephenson, of the City and County of Marinette, in the State of Wisconsin, being in good health and of sound mind and memory, do make, publish and declare the following to be my last will and testament.

It is my chief desire by this will to insure an adequate and comfortable support for my wife during the remainder of her life and to relieve her of all the cares and uncertainties of business affairs and to provide for the distribution of my estate equally among all my children and the issue of my deceased children, such issue taking by right of representation, as I have hereinafter provided.

Item One. I do hereby revoke all former wills by me made.

Item Two. I direct that my mortal remains be buried at the family burial lot in Forest Home Cemetery, in Marinette aforesaid.

Item Three. I will and direct that as soon as may be after my decease, the expenses of my last sickness and funeral and all my just debts be paid out of my personal estate. I furthermore direct that all inheritance taxes legally assessed upon any bequest or devise herein contained shall be paid out of the corpus of my whole estate, except the inheritance taxes legally assessed upon each of the parts mentioned in Items numbered from Eleven (11) to Nineteen (19) hereof, both inclusive, which I direct shall be paid out of the corpus of each of said parts respectively.

Item Four. I give and bequeath unto my wife, Martha E. Stephenson, absolutely, all of the fuel and consumable stores and provisions which shall be in or about my dwelling house and the barn and premises connected therewith at the time of my decease; also Twenty-five Thousand Dollars (\$25,000.00), to be paid to her within one (1) year after my decease, but a sufficient portion thereof to enable her to live and maintain her household in liberal style to be advanced to her from time to time in appropriate installments, according to her needs or convenience, in the discretion of the executors of this will. This sum of Twenty-five Thousand Dollars (\$25,000.00) is intended to be in lieu of her widow's allowance during the progress of the settlement of my estate.

Item Five. I also give and bequeath unto my wife all the furniture, plate, linen, china, glass, books, prints, pictures

and other non-consumable household effects of every name and nature, of which I shall die possessed and which shall then be in use or on hand for use in connection with
39 my homestead on Riverside Avenue in the City of Marinette aforesaid, excepting my wearing apparel and personal ornaments, money and securities for money, evidences of debt and of title, accounts, vouchers and manuscripts.

I also give and bequeath unto my wife all the horses, buggies, carriages, cutters, sleighs and all barn furniture, tools, utensils and other equipment of which I shall die possessed and which shall then be in use or on hand for use in connection with the barn on my homestead premises.

I also give and devise unto my wife the use, during her widowhood, of the family residence, together with all stables and outstanding buildings situated between Riverside Avenue and Stephenson Street, the same being situated on a part of Lot Thirteen (13) of the Subdivisions of Section Six (6), in Township Thirty (30) North of Range Twenty-four (24) East, in Marinette County aforesaid, together with the land and premises as heretofore occupied and used by me in connection therewith.

I also give and bequeath unto my wife One Hundred Thousand (\$100,000.00) absolutely, to use and dispose of as she may deem best, to be paid to her without interest one (1) month after she shall have made here election, after my death, to take the provisions made her by this will and not the provisions made for her by law.

I also give and bequeath unto my wife the net annual income of one (1) of the parts into which my estate shall be divided as hereinafter provided, to be paid to her by my executors and trustees at least annually as long as she shall live, as directed in Item number Eleven (11) of this will.

It is my wish and advice that my widow elect to take the provisions I have made for her by this will in lieu of the provisions made for her by law, it being my intention that she shall not be entitled to both. But, if she should elect not to take the provisions made for her by this will, then my executors shall transfer to her out of my estate the amount of whatever she may be entitled to by law as my widow as soon as the same shall be ascertained and all the provisions of this will, other than those made for her, shall be carried out by my executors and trustees as herein provided.

Item Six. I give and bequeath absolutely my wearing ap-

parel and personal ornaments of which I shall die possessed unto my son Grant T. Stephenson, but, if he should not survive me, then unto my oldest male grandchild bearing the surname Stephenson.

Item Seven. I give and bequeath unto each of my half-
40 brothers, Thomas Stephenson and William H. Stephenson, of Marinette, Five Thousand Dollars (\$5,000.00), to be paid without interest, whenever, in the judgment of my executors, they shall deem best, if such half-brothers shall survive me.

Item Eight. I give and bequeath unto my trustees hereinafter named, the survivor of them and their successors in trust, the sum of Two Thousand Dollars (\$2,000.00) in trust, nevertheless, to apply the income thereof for perpetually keeping in good repair and condition the burial lot aforesaid and the graves, grave-stones, monuments and mausoleum thereon; also any other burial ground, with graves, grave-stones, monuments and mausoleum thereon, which burial ground shall for any cause be substituted for said burial lot and my grave removed thereto.

Item Nine. I will and direct that my executors hereinafter named lay out, improved and equip as and for a public park the following described tract of land situate in the City and County of Marinette, Wisconsin: All of the land lying between the northeasterly line of Riverside Avenue and the river side of the stone retaining wall along the Menominee River and bounded on the northwest by a continuation of the northwesterly line of the residence property of my daughter Mary Brown, continued on its course to said retaining wall and on the southeast by a continuation of the southeasterly line of the residence property of my daughter Maggie Hodgins, continued on its course to said retaining wall; and that they procure and erect in said park upon a suitable pedestal a statue of myself to cost not more than Ten Thousand Dollars (\$10,000.00) of life size, or larger, in the discretion of said executors and of bronze granite or other stone not disposed to rust, stain, crack or crumble; that they cause to be inscribed upon the pedestal of such statue my name, the time and place of my birth, my several occupations and the time of my death and such other matters connected with my life as they shall deem proper to mention; also suitable mottoes or sentiments, whether suggested by my life or sayings, or drawn from other sources, to encourage the youth of future years to proper habits of frugality, honesty, indus-

try and sobriety; and that after parking said premises and the erection thereon of such completed statue, my said executors by a suitable and sufficient deed convey said premises to the City of Marinette as trustee in trust for the public, upon condition that after the execution and delivery of such deed the Common Council of said City shall by ordinance or resolution accept the grant upon the terms, conditions and forfeitures stated in the deed, that the premises shall forever be kept up and maintained for the uses of a public park and that upon a substantial abandonment of the premises for such uses, or upon the substitution, conversion and subjection of the same to other uses, such grant shall be
41 forfeited and the premises revert to and be and become the property of my heirs and assigns, provided that my said executors shall not do any work or incur any expense in complying with the directions in this Item until they have submitted a proposition in writing to said Common Council to park said land, place thereon said statue and convey the premises to the City of Marinette as trustees for the public, for the uses and upon the terms, conditions and forfeitures hereinbefore set forth (stating them in said proposition) and not unless said Common Council shall by resolution agree to accept such grant for such uses and upon said terms, conditions and forfeitures.

If, upon submitting such proposition to such Common Council, it shall not be accepted, it may be again submitted to some subsequent Council. If, upon its second submission, the proposition be again rejected, the directions contained in this Item shall be deemed to be and to have been withdrawn and the said tract of land shall become and be treated as a part of my residuary estate.

Item Ten. All the rest, residue and remainder of my estate, real, personal and mixed and of whatsoever the same may consist and wherever the same may be, I give, devise and bequeath unto my trustees hereinafter named, the survivor of them and their successors in trust, to have and to hold the same during the continuance of the lives of my wife and my daughter Harriet Augusta Skidmore and twenty-one (21) years thereafter, in trust, nevertheless, to hold, care for and manage the same and to receive the rents, issues, income and profits thereof and to apply them to the uses and for the purposes and with the powers hereinafter provided.

I direct my trustees, after my wife shall have elected, or be deemed to have elected, whether to take the provisions made

for her by this will or those made for her by law, to divide all the rest, residue and remainder of my estate, real, personal and mixed and of whatsoever the same may consist and wheresoever the same may be, into nine (9) parts of equal value, if my wife shall survive me and shall elect to take the provisions made for her by this will. If my wife shall survive me and shall elect to take the provisions made for her by law in lieu of those made for her by this will, then I direct my said trustees to divide into eight (8) parts of equal value all my estate of every nature and kind, there first being given to my wife what she may be entitled to by law as my widow and after there shall have been deducted from my estate the property necessary to carry out and satisfy the provisions of Items numbered Two (2), Three (3), Six (6), Seven (7), Eight (8), and Nine (9) of this will.

I give my trustees full power and authority to determine what portions or interests, either divided or undivided, 42 or some divided and some undivided, of my said residuary estate shall constitute each one of the said nine (9), or eight (8) parts, as the case may be, into which they are to divide the same, and to number each part from one (1) to eight (8) or nine (9), as the case may be, hereby only specifying that after such division shall have been made, each one of said parts shall have, in the judgment of said trustees, a value that shall be equal to each of the other of said parts; and hereby further directing that when such division shall have been made by said trustees as above directed the same shall be final and conclusive as to all parties who may be or become interested therein.

Item Eleven. I direct said trustees to pay my wife annually, as long as she shall live, the net annual income from part numbered nine (9), into which my trustees shall have divided my estate as aforesaid. Upon the death of my wife, part nine (9) shall cease to exist and whatever may then remain in their hands of said part nine (9), I direct said trustees to transfer to and distribute equally among all the then existing remaining parts into which my trustees shall have divided my estate and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a portion thereof and be held and dispose of the same as is herein provided for the holding and disposal of said then existing remaining parts.

Item Twelve. I direct said trustees to pay to the widow of

my son Isaac Watson Stephenson during such period of the continuance of the trust created by Item Ten (10) of this will, as she shall remain unmarried, annually, Twenty-five Hundred Dollars (\$2,500.00) out of the net annual income of said part eight (8) and upon the termination of this trust, if she be then living and shall not have remarried, to transfer to her out of the principal of said part eight (8) the sum of Sixty Thousand Dollars (\$60,000.00), or property in the opinion of said trustees of the value of Sixty Thousand Dollars (\$60,000.00); and I direct said trustees during the continuance of said trust to pay annually to the children of my said son Isaac Watson Stephenson equally the remainder of such net annual income, or themselves expend and use the same for the welfare and support of said children.

Four (4) years after my death, I direct my said trustees to commence transferring to each child of my son Isaac Watson Stephenson, provided such child shall then be thirty (30) years of age, and if not then thirty (30) years of age, then upon such child's reaching the age of thirty (30) years, its equal portion of the trust property constituting part numbered eight (8), after first reserving from said part eight (8) property of the value of Sixty Thousand Dollars (\$60,000), if the widow of my son Isaac Watson Stephenson shall still be living and shall not have remarried.

I direct such first transfer to such child to be one-quarter of what said trustees shall then estimate to be such child's equal portion of said part eight (8). I direct that eight (8) years after such first transfer said trustees transfer to such child one-third of the remainder of what said trustees shall then have in their hands of such child's equal portion of said part; and twelve (12) years after such first transfer I direct said trustees to transfer to such child one-half of the remainder of what said trustees shall then have in their hands of such child's equal portion of said part; and sixteen (16) years after such first transfer I direct said trustees to transfer to such child all the remainder that said trustees shall then have in their hands of such child's equal portion of said part eight (8).

I direct said trustees to retain the property of the value of Sixty Thousand Dollars (\$60,000.00) reserve by them as aforesaid as long as the widow of my son Isaac Watson Stephenson shall remain unmarried during the period of the trust hereby created. If at any time she shall die or remarry before the end of the trust relating to said part eight (8) the

said property of the value of Sixty Thousand Dollars (\$60,000.00) is to be mingled with the other portions of the said part eight (8) and the income and principal thereof treated thereafter as the rest of said part eight (8) and paid to and used for the welfare and support of said children of my son Isaac Watson Stephenson.

Should the net annual income of said property of the value of Sixty Thousand Dollars (\$60,000.00) while reserved by said trustees in any year exceed Twenty-five Hundred Dollars (\$2,500.00), such excess I direct said trustees to pay annually to the children of my son Isaac Watson Stephenson equally, or themselves expend and use the same for the welfare and support of said children.

Upon the death of any child of my son Isaac Watson Stephenson, I direct its surviving issue, if any, shall take and enjoy what the parent would take and enjoy, if living; and if there be no surviving issue, or if all such issue shall die, then the surviving child of my son Isaac Watson Stephenson during its life and upon its death, its surviving issue shall take and enjoy the same. Upon the termination of this trust I direct said trustees to transfer to the two (2) children of my son Isaac Watson Stephenson the balance of said part eight (8) then in the hands of my said trustees, in such portion to each so that each child of my said son Isaac Watson Stephenson shall have received its equal half of the principal and income of said part eight (8).

44 I direct that the surviving issue of each deceased child of my son Isaac Watson Stephenson take per stirpes and not per capita what its parent would have taken, if living; and if there be no such issue of such deceased child, then the surviving child of my son Isaac Watson Stephenson shall take the same; and if there be no such surviving child, then its issue, if any, shall take the same per stirpes and not per capita, subject always to the previous direction to transfer to the widow of my son Isaac Watson Stephenson property of the value of Sixty Thousand Dollars (\$60,000.00), if she shall then be entitled thereto.

If at any time prior to the termination of this trust, all the children of my son Isaac Watson Stephenson and all their issue shall have died, then said part eight (8) shall cease to exist and shall not thereafter be entitled to any additions from any other part and I direct that all of said part eight (8) then in the hands of said trustees, excepting the property of the value of Sixty Thousand Dollars (\$60,000.00) hereto-

fore reserved for the benefit of his widow, shall be transferred to and distributed equally among all the then existing remaining parts into which my trustees shall have divided my estate and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a portion thereof and be held and disposed of the same as is herein provided for the holding and disposal of said then existing remaining parts; and if the widow of my son Isaac Watson Stephenson shall die or shall remarry before the termination of this trust, but after the death of all the children of my son Isaac Watson Stephenson and after the death of all their issue, I direct said trustees to transfer to and distribute equally among all the then existing remaining parts into which my estate shall have been divided all of said property of the value of Sixty Thousand Dollars (\$60,000.00) reserve for the benefit of the widow of my son Isaac Watson Stephenson.

Item Thirteen. I direct said trustees during the continuance of the trust created by Item Ten (10) of this will to pay annually to my grandsons, Howard Stephenson George and Isaac Stephenson George, equally, the net annual income of said part numbered seven (7), or if my said trustees shall deem best, themselves to use and expend such net annual income for the welfare and support of said grandsons last mentioned. Four (4) years after my death I direct my said trustees to commence transferring to each of my said grandsons, children of my daughter Ella J. George, his equal portion of the trust property constituting part seven (7), provided such grandson shall then be thirty (30) years of age, and if not then thirty (30) years of age, then upon such 45 grandson's reaching the age of thirty (30) years.

I direct such first transfer to such grandson to be one-quarter of what said trustees shall then estimate to be such grandson's equal portion of said part seven (7). I direct that eight (8) years after such first transfer said trustees transfer to such grandson one-third of the remainder of what said trustees shall then have in their hands of such grandson's equal portion of said part; and twelve (12) years after such first transfer I direct said trustees to transfer to such grandson one-half of the remainder of what said trustees shall then have in their hands of such grandson's equal portion of said part; and sixteen (16) years after such first transfer I direct said trustees to transfer to such grandson all the

remainder that said trustees shall then have in their hands of such grandson's equal portion of said part seven (7).

In case of the death of any such grandson mentioned in Item Thirteen (13), I direct his surviving issue, if any, shall take and enjoy what he would take and enjoy if living; and if there be no surviving issue, or if all such issue shall die, then the surviving grandson mentioned in Item Thirteen (13) during his life and upon his death, his surviving issue shall take and enjoy the same. Upon the termination of this trust, I direct said trustees to transfer to my said two (2) grandsons, children of my deceased daughter Ella J. George, the balance of said part seven (7) then in the hands of my said trustees in such portion to each, so that each said grandson shall have received his equal half of the principal and income of said part seven (7), I direct that the issue of each deceased grandson mentioned in this Item Thirteen (13) shall take per stirpes and not per capita what its parent would have taken, if living; and if there be no such issue of such deceased grandson, then the surviving grandson mentioned in this Item Thirteen (13) shall take the same; and if there be no surviving grandson, then his issue, if any, shall take the same per stirpes and not per capita.

If at any time prior to the termination of this trust, all the children of my daughter Ella J. George and all their issue shall have died, then said part seven (7) shall cease to exist and shall not thereafter be entitled to any additions from any other part and I direct that all of said part seven (7) then in the hands of said trustees, shall be transferred to and distributed equally among all the then existing remaining parts into which my trustees shall have divided my estate and thereafter the same shall constitute a portion of said then existing remaining parts respectively the same as if originally a portion thereof and be held and disposed of the same as is herein provided for the holding and disposal of said then existing remaining parts.

46 Item Fourteen. I direct said trustees to pay to my daughter Georgianna Ludington annually the net annual income from part numbered six (6) into which my trustees shall have divided my estate as aforesaid. If my wife shall elect to take the provisions made for her by this will, I direct said trustees to transfer to my daughter Georgianna Ludington One Hundred Thousand Dollars (\$100,000.00), in money or in assets equal thereto, out of the principal of said part six (6) as soon as the time shall have arrived when it

shall be determined that my wife has made such election, last mentioned. If daughter Georgianna Ludington shall be living four (4) years after my death, I direct said trustees to transfer to her out of the principal of said part six (6) one-quarter of the principal of what they shall then have in their hands belonging to said part six (6). If my daughter Georgianna Ludington shall be living eight (8) years after my death, I direct said trustees to transfer to her one-third of the principal of what they shall then have in their hands belonging to said part six (6). If my daughter Georgianna Ludington shall be living twelve (12) years after my death, I direct said trustees to transfer to her one-half of the principal of what they shall then have in their hands belonging to said part six (6). If my daughter Georgianna Ludington shall be living sixteen (16) years after my death, I direct said trustees to transfer to her all the remainder of said part six (6) then in their hands and to transfer to her from time to time, if living, any and all further additions to said part six (6) that may be added thereto from any of the other parts.

I give, devise and bequeath to the appointee or appointees of my daughter Georgianna Ludington by her last will and testament all property of every nature and kind in the hands of my said trustees at the time of her death constituting said part six (6) and all property that shall thereafter be added to said part six (6) from any other part. If my daughter Georgianna Ludington shall die without leaving issue her surviving and without having by her last will and testament appointed a person or persons to receive all the property in the hands of said trustees at the time of her death then constituting said part six (6) and any additions thereto, then
47 said part six (6) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and all of said part six (6) then in the hands of said trustees shall be transferred to and distributed equally among all the existing remaining parts into which my trustees shall have divided my estate, and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a part thereof, and be held and disposed of as is herein provided for the holding and disposal of the said then existing remaining parts.

In case my daughter Georgianna Ludington shall die leaving issue her surviving, and shall not by her last will and testament appoint a person or persons to receive all such property then constituting said part six (6) and all additions

thereto, then as to such portions of said part six (6) and all additions thereto as to which there is no appointee named by the last will and testament of my daughter Georgianna Ludington, I direct said trustees during the continuance of this trust to pay to the issue of my daughter Georgianna Ludington the net annual income of the same, or themselves use and expend the said net annual income for the welfare and support of such issue, and upon the termination of this trust by lapse of time, I give, devise and bequeath to the issue of my daughter Georgianna Ludington all the remainder of the property then in their hands constituting said part six (6) and all additions thereto as to which there shall be no appointee in her will, such issue taking per stirpes and not per capita. But if in the case last mentioned all such issue shall die before the termination of this trust by lapse of time, then, after such issue shall die, said part six (6) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and I direct that all of said part six (6) then in the hands of said trustees shall be transferred to and distributed equally among all the then existing remaining parts into which my trustees shall have divided my estate, and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a portion thereof, to be held and disposed of accordingly.

Item Fifteen. I direct said trustees to pay to my daughter Elizabeth S. Morgan annually the net annual income
48 from part numbered five (5) into which my trustees shall have divided my estate as aforesaid. If my wife shall elect to take the provisions made by her by this will, I direct said trustees to transfer to my daughter Elizabeth S. Morgan One Hundred Thousand Dollars (\$100,000.00), in money or in assets equal thereto, out of the principal of said part five (5) as soon as the time shall have arrived when it shall be determined that my wife has made such election, last mentioned. If my daughter Elizabeth S. Morgan shall be living four (4) years after my death, I direct said trustees to transfer to her out of the principal of said part five (5) one-quarter of the principal of what they shall then have in their hands belonging to said part five (5). If my daughter Elizabeth S. Morgan shall be living eight (8) years after my death, I direct said trustees to transfer to her one-third of the principal of what they shall then have in their hands belonging to said part five (5). If my daughter Elizabeth S. Morgan

shall be living twelve (12) years after my death, I direct said trustees to transfer to her one-half of the principal of what they shall then have in their hands belonging to said part five (5). If my daughter Elizabeth S. Morgan shall be living sixteen (16) years after my death, I direct said trustees to transfer to her all the remainder of said part five (5) then in their hands and to transfer to her from time to time, if living, any and all further additions to said part five (5) that may be added thereto from any of the other parts.

I give, devise and bequeath to the appointee or appointees of my daughter Elizabeth S. Morgan by her last will and testament all property of any nature and kind in the hands of my said trustees at the time of her death constituting said part five (5) and all property that shall thereafter be added to said part five (5) from any other part. If my daughter Elizabeth S. Morgan shall die without leaving issue her surviving and without having by her last will and testament appointed a person or persons to receive all the property in the hands of said trustees at the time of her death then constituting said part five (5) and any additions thereto, then said part five (5) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and all of said part five (5) then in the hands of said trustees shall be transferred to and distributed equally among all the existing remaining parts into which my trustees shall have divided my estate, and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a part thereof, and be held and disposed of as is herein provided for the holding and disposal of the said then existing remaining parts.

In case my daughter Elizabeth S. Morgan shall die leaving issue her surviving, and shall not by her last will and testament appoint a person or persons to receive all such property then constituting said part five (5) and all additions
49 thereto, then as to such portions of said part five (5) and all additions thereto as to which there is no appointee named by the last will and testament of my daughter Elizabeth S. Morgan, I direct said trustees during the continuance of this trust to pay to the issue of my daughter Elizabeth S. Morgan the net annual income of the same, or themselves use and expend the said net annual income for the welfare and support of such issue, and upon the termination of this trust by lapse of time, I give, devise and bequeath to the

issue of my daughter Elizabeth S. Morgan all the remainder of the property then in their hands constituting said part five (5) and all additions thereto as to which there shall be no appointee in her will, such issue taking per stirpes and not per capita. But if in the case last mentioned all such issue shall die before the termination of this trust by lapse of time, then, after such issue shall die, said part five (5) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and I direct that all of said part five (5) then in the hands of said trustees shall be transferred to and distributed equally among all the then existing remaining parts into which my trustees shall have divided my estate, and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a portion thereof, to be held and disposed of accordingly.

Item Sixteen. I direct said trustees to pay to my daughter Mary Brown annually the net annual income from part numbered four (4) into which my trustees shall have divided my estates as aforesaid. If my wife shall elect to take the provisions made for her by this will, I direct said trustees to transfer to my daughter Mary Brown One Hundred Thousand Dollars (\$100,000), in money or in assets equal thereto, out of the principal of said part four (4) as soon as the time shall have arrived when it shall be determined that my wife has made such election, last mentioned. If my daughter Mary Brown shall be living four (4) years after my death, I direct said trustees to transfer to her out of the principal of said part four (4) one-quarter of the principal of what they shall then have in their hands belonging to said part four (4). If my daughter Mary Brown shall be living eight (8) years after my death, I direct said trustees to transfer to her one-third of the principal of what they shall then have in their hands belonging to said part four (4). If my daughter Mary Brown shall be living twelve (12) years after my death, I direct said trustees to transfer to her one-half of the principal of what they shall then have in their hands belonging to said part four (4). If my daughter Mary Brown shall be living sixteen (16) years after my death, I direct said trustees to transfer to her all the remainder of said part four (4) then in their hands and to transfer to her from time to time, if living, any and all further additions to said part four (4) that may be added thereto from any of the other parts.

50 I give, devise and bequeath to the appointee or appointees of my daughter Mary Brown by her last will and testament all property of every nature and kind in the hands of my said trustees at the time of her death constituting said part four (4) and all property that shall thereafter be added to said part four (4) from any other part. If my daughter Mary Brown shall die without leaving issue her surviving and without having by her last will and testament appointed a person or persons to receive all the property in the hands of said trustees at the time of her death then constituting said part four (4) and any additions thereto, then said part four (4) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and all of said part four (4) then in the hands of said trustees shall be transferred and distributed equally among all the existing remaining parts into which my trustees shall have divided my estate, and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a part thereof, and be held and disposed of as is herein provided for the holding and disposal of the said then existing remaining parts.

In case my daughter Mary Brown shall die leaving issue her surviving, and shall not by her last will and testament appoint a person or persons to receive all such property then constituting said part four (4) and all additions thereto, then as to such portions of said part four (4) and all additions thereto as to which there is no appointee named by the last will and testament of my daughter Mary Brown, I direct said trustees during the continuance of this trust to pay to the issue of my daughter Mary Brown the net annual income of the same, or themselves use and expend the said net annual income for the welfare and support of such issue, and upon the termination of this trust by lapse of time, I give, devise and bequeath to the issue of my daughter Mary Brown all the remainder of the property then in their hands constituting said part four (4) and all additions thereto as to which there shall be no appointee in her will, such issue taking per stirpes and not per capita. But if in the case last mentioned all such issue shall die before the termination of this trust by lapse of time, then, after such issue shall die, said part four (4) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and I direct that all of said part four (4) then in the hands of said trustees

shall be transferred to and distributed equally among all the then existing remaining parts into which my trustees shall have divided my estate, and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a portion thereof, to be held and disposed of accordingly.

Item Seventeen. I direct said trustees to pay to my daughter Harriet Augusta Skidmore annually the net annual
51 income from part numbered three (3) into which my trustees shall have divided my estate as aforesaid. If my wife shall elect to take the provisions made for her by this will, I direct said trustees to transfer to my daughter Harriet Augusta Skidmore One Hundred Thousand Dollars (\$100,000.00), in money or in assets equal thereto, out of the principal of said part three (3) as soon as the time shall have arrived when it shall be determined that my wife has made such election, last mentioned. If my daughter Harriet Augusta Skidmore shall be living four (4) years after my death, I direct said trustees to transfer to her out of the principal of said part three (3) one-quarter of the principal of what they shall then have in their hands belonging to said part three (3). If my daughter Harriet Augusta Skidmore shall be living eight (8) years after my death, I direct said trustees to transfer to her one-third of the principal of what they shall then have in their hands belonging to said part three (3). If my daughter Harriet Augusta Skidmore shall be living twelve (12) years after my death, I direct said trustees to transfer to her one-half of the principal of what they shall then have in their hands belonging to said part three (3). If my daughter Harriet Augusta Skidmore shall be living sixteen (16) years after my death, I direct said trustees to transfer to her all the remainder of said part three (3) then in their hands and to transfer to her from time to time, if living, any and all further additions to said part three (3) that may be added thereto from any of the other parts.

I give, devise and bequeath to the appointee or appointees of my daughter Harriet Augusta Skidmore by her last will and testament all property of every nature and kind in the hands of my said trustees at the time of her death constituting said part three (3) and all property that shall thereafter be added to said part three (3) from any other part. If my daughter Harriet August Skidmore shall die without leaving issue her surviving and without having by her last

will and testament appointed a person or persons to receive all the property in the hands of said trustees at the time of her death then constituting said part three (3) and any additions thereto, then part three (3) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and all of said part three (3) then in the hands of said trustees shall be transferred to and distributed equally among all the existing remaining parts into which my trustees shall have divided my estate, and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a part thereof, and be held and disposed of as is herein provided for the holding and disposal of the said then existing remaining parts.

52 In case my daughter Harriett August Skidmore shall die leaving issue her surviving, and shall not by her last will and testament appoint a person or persons to receive all such property then constituting said part three (3) and all additions thereto, then as to such portions of said part three (3) and all additions thereto as to which there is no appointee named by the last will and testament of my daughter Harriet Augusta Skidmore, I direct said trustees during the continuance of this trust to pay to the issue of my daughter Harriet Augusta Skidmore the net annual income of the same, or themselves use and expend the said net annual income for the welfare and support of such issue, and upon the termination of this trust by lapse of time, I give, devise and bequeath to the issue of my daughter Harriet Augusta Skidmore all the remainder of the property then in their hands constituting said part three (3) and all additions thereto as to which there shall be no appointee in her will, such issue taking per stirpes and not per capita. But if in the case last mentioned all such issue shall die before the termination of this trust by lapse of time, then, after such issue shall die, said part three (3) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and I direct that all of said part three (3) then in the hands of said trustees shall be transferred to and distributed equally among all the then existing remaining parts into which my trustees shall have divided my estate, and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a portion thereof, to be held and disposed of accordingly.

Item Eighteen. I direct said trustees to pay to my daughter Maggie Hodgins annually the net annual income from part numbered two (2) into which my trustees shall have divided my estate as aforesaid. If my wife shall elect to take the provisions made for her by this will, I direct said trustees to transfer to my daughter Maggie Hodgins One Hundred Thousand Dollars (\$100,000.00); in money or in assets equal thereto, out of the principal of said part two (2) as soon as the time shall have arrived when it shall be determined that my wife has made such election, last mentioned. If my daughter Maggie Hodgins shall be living four (4) years after my death, I direct said trustees to transfer to her out of the principal of said part two (2) one-quarter of the principal of what they shall then have in their hands belonging to said part two (2). If my daughter Maggie Hodgins shall be living eight (8) years after my death, I direct said trustees to transfer to her one-third of the principal of what they shall then have in their hands belonging to said part two (2). If my daughter Maggie Hodgins shall be living twelve (12) years after my death, I direct said trustees to transfer to her one-half of the principal of what they shall then have in their hands belonging to said part two (2). If my daughter Maggie Hodgins shall be living sixteen (16) years after my death, I direct said trustees to transfer to her all the remainder of said part two (2) then in their hands and to transfer to her from time 53 to time, if living, any and all further additions to said part two (2) that may be added thereto from any of the other parts.

If my daughter Maggie Hodgins shall die without issue her surviving, I give, devise and bequeath to the appointee or appointees of my daughter Maggie Hodgins by her last will and testament all property of every nature and kind in the hands of my said trustees at the time of her death constituting said part two (2) and all property that shall thereafter be added to said part two (2) from any other part. If my daughter Maggie Hodgins shall die without leaving issue her surviving and without having by her last will and testament appointed a person or persons to receive all the property in the hands of said trustees at the time of her death then constituting said part two (2) and any additions thereto, then said part two (2) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and all of said part two (2) then in the hands of said trustees shall be transferred to and

distributed equally among all the existing remaining parts into which my trustees shall have divided my estate, and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a part thereof, and be held and disposed of as is herein provided for the holding and disposal of the said then existing remaining parts.

In case my daughter Maggie Hodgins shall die leaving issue her surviving, I direct said trustees during the continuance of this trust to pay to the issue of my daughter Maggie Hodgins the net annual income of part two (2), or themselves use and expend the said net annual income for the welfare and support of such issue, and upon the termination of this trust by lapse of time, I give, devise and bequeath to the issue of my daughter Maggie Hodgins all the remainder of the property then in their hands constituting said part two (2) and all additions thereto, such issue taking per stirpes and not per capita. But if in the case last mentioned all such issue shall die before the termination of this trust by lapse of time, then, after such issue shall die, said part two (2) shall cease to exist and shall not thereafter be entitled to any additions from any other part, and I direct that all of said part two (2) then in the hands of said trustees shall be transferred to and distributed equally among all the then existing remaining parts into which my trustees shall have divided my estate, and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a portion thereof, to be held and disposed of accordingly.

Item Nineteen. I direct said trustees to pay to my son Grant T. Stephenson annually the net annual income from part numbered one (1) into which my trustee shall have
54 divided my estate as aforesaid. If my wife shall elect to take the provisions made for her by this will, I direct said trustees to transfer to my son Grant T. Stephenson One Hundred Thousand Dollars (\$100,000.00), in money or in assets equal thereto, out of the principal of said part one (1) as soon as the time shall have arrived when it shall be determined that my wife has made such election, last mentioned. If my son Grant T. Stephenson shall be living four (4) years after my death, I direct said trustees to transfer to him out of the principal of said part one (1) one-quarter of the principal of what they shall then have in their hands belonging to said part one (1). If my son Grant T. Stephenson shall be living eight (8) years after my death, I direct said trustees to transfer to him

one-third of the principal of what they shall then have in their hands belonging to said part one (1). If my son Grant T. Stephenson shall be living twelve (12) years after my death, I direct said trustees to transfer to him one-half of the principal of what they shall then have in their hands belonging to said part one (1). If my son Grant T. Stephenson shall be living sixteen (16) years after my death, I direct said trustees to transfer to him all the remainder of said part one (1) then in their hands and to transfer to him from time to time, if living, any and all further additions to said part one (1) that may be added thereto from any of the other parts.

If my son Grant T. Stephenson shall die before said trustees shall have transferred all the property constituting said part one (1) and shall leave surviving Irene Eldred Stephenson his widow, I direct said trustees to reserve from part one (1) enough property, as far as possible, to equal a fund of Sixty Thousand Dollars (\$60,000.00) and to pay annually the net annual income thereof to said Irene Eldred Stephenson as the widow of my son Grant T. Stephenson during such portion of the unexpired term of this trust as she shall live and not remarry; and upon the termination of this trust by lapse of time, to transfer to her, if she shall survive and shall not have remarried, all the principal of said fund reserved for her by this Item Nineteen (19) of my will.

In case there shall not be in said part one (1) sufficient property to enable the trustees to reserve a fund of Sixty Thousand Dollars (\$60,000.00) at the time of the death of my son Grant T. Stephenson, said trustees shall in all cases, anything herein to the contrary, notwithstanding, add to said fund from any and all additions that may come to said part one (1) from any other part, enough to make said fund equal Sixty Thousand Dollars (\$60,000.00).

During the term of this trust and so long as said Irene Eldred Stephenson lives and remains unmarried, said fund reserved for her as aforesaid as his widow shall be kept for the sole purpose hereinbefore set forth and shall be ex-
55 cepted from all the remaining provisions of this Item Nineteen (19) and shall be considered as excluded whenever mention is hereafter made in this Item of said part one (1) or the property constituting said part one (1).

If such widow of my son Grant T. Stephenson shall die or remarry before the termination of this trust, then from and after the date of her death or remarriage, I direct said trustees to dispose of the principal and income of all of said fund

then in their hands so reserved for her to the person or persons who would have been entitled thereto at the time of her death or remarriage, if my son Grant T. Stephenson had died as aforesaid and had left no widow.

If my son Grant T. Stephenson shall die without leaving issue him surviving, I give, devise and bequeath to the appointee or appointees of my son Grant T. Stephenson by his last will and testament all the property of every nature and kind in the hands of my said trustees at the time of his death constituting said part one (1) and all property that shall thereafter be added to said part one (1) from any other part.

If my son Grant T. Stephenson shall die without leaving issue him surviving and without having by his last will and testament appointed a person or persons to receive all the property in the hands of said trustees at the time of his death then constituting said part one (1) and any additions thereto, then said part one (1) shall cease to exist and shall not thereafter be entitled to any additions from any other part; and all of said part one (1) then in the hands of said trustees shall be transferred to and distributed equally among all the existing remaining parts into which my trustees shall have divided my estate, and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a part thereof, and be held and disposed of as is herein provided for the holding and disposal of the said then existing remaining parts.

In case my son Grant T. Stephenson shall die leaving issue him surviving, I direct said trustees during the continuance of this trust to pay to the issue of my son Grant T. Stephenson the net annual income of part one (1), or themselves use and expend the net annual income of the same for the welfare and support of said issue, and upon the termination of this trust by lapse of time, I give, devise and bequeath to the issue of my son Grant T. Stephenson all the remainder of said property then in their hands constituting said part one (1) and all additions thereto, such issue taking per stirpes and not per capita.

But if in the case of my son Grant T. Stephenson's dying and leaving issue him surviving, all such issue shall die before the termination of this trust by lapse of time, then after
56 such issue shall die, said part one (1) shall cease to exist and shall not be entitled thereafter to any additions from any other part; and I direct that all of said part one (1) then in the hands of said trustees shall be transferred to and dis-

tributed equally among all the then existing remaining parts into which my trustees have divided my estate and thereafter the same shall constitute a portion of said then existing remaining parts, respectively, the same as if originally a portion thereof, to be held and disposed of accordingly.

Item Twenty. I will and direct that prior to the division of my residuary estate into equal parts as hereinabove directed, the net income thereof from the date of my death shall be ascertained by my executors and trustees as soon as and as often as practicable and I direct my executors and trustees to pay to the beneficiaries under the Items numbered from Eleven (11) to Nineteen (19), both inclusive, of this will, from time to time, out of such income and when and as collected sums of money equal to their respective interests in the net income of my estate as set forth by said Items numbered from Eleven (11) to Nineteen (19), both inclusive and upon the same terms and conditions as are set forth, respectively, in said Items numbered from Eleven (11) to Nineteen (19), both inclusive and the other provisions of my will relating to and modifying said Items.

The said executors and trustees are to make such payments of income the same as if my estate had been actually divided at the time of my death; hereby authorizing said executors and trustees to make advances or payments on account of such income to said beneficiaries from time to time and to adjust, determine and pay the balance when such division of my estate shall have been actually made and the income actually collected, provided the portions thus advanced or paid shall not exceed in the aggregate the interests of such beneficiary in such income and in the case of each infant beneficiary said executors prior to the division of my estate into parts are authorized to use and expend for the welfare and support of such infant such portions of the infant's share as said executors shall deem necessary and the balance to pay to said trustees who shall hold, use and dispose of the balance of said income so received the same as they are directed to dispose of said infant's portion of the income of any of the several parts into which my estate shall have been divided; it being my will that such division as far as possible, shall take effect by relation as of the time of my death, subject to the exigencies of the administration of my estate and the preliminary things to be done to fully carry out the provisions of this will.

Item Twenty-One. In every case where at the time of my death I shall hold any unpaid note or other obligation of any

of my issue, I direct my trustees in dividing my estate into
57 equal parts as aforesaid to assign the unpaid note or
obligation of any such issue to the particular part of my
estate in which such issue is primarily interested under the
trust provisions hereof.

Item Twenty-Two. It is my will that the survivors and survivor and successors in trust of my said executors and trustees and such of them as shall act under this will; shall, respectively, use and enjoy all the powers, duties, privileges, rights, exemptions and the right to use his or their discretion in certain matters that are specifically given to said executors and trustees respectively named in this will, the same as if the words "the survivors and survivor of them, their successors or successor in trust, and such of them as shall act under this will" had been inserted in this will next after the word "executors" and next after the word "trustees" in every instance where such words are used in this will.

Item Twenty-Three. Whereas I have heretofore provided for the division of the rest, residue and remainder of my estate into eight (8), or nine (9), equal parts as hereinbefore set forth, it is my will in case my wife shall not survive me, that all the provisions made for her in this will shall lapse and that such division shall be made into eight (8) parts only.

In case all my issue mentioned in any one or more of the items numbered from Twelve (12) to Nineteen (19), both inclusive, respectively, shall die before my death, it is my will that the bequests in each such item shall lapse where my issue shall so fail to survive me and the number of equal parts into which I have directed my estate to be divided shall be decreased accordingly; and the amount of part numbered nine (9), in case my wife shall survive me, and the amounts of such remaining parts mentioned in the items where my issue named therein shall survive me shall be increased equally accordingly; excepting, however, the provisions made for the widow of my son Isaac Watson Stephenson in Item numbered Twelve (12) of this will and those for Irene Eldred Stephenson in Item numbered Nineteen (19) of this will, which I direct shall be carried out notwithstanding the death of all my issue mentioned in said Items numbered Twelve (12) and Nineteen (19), respectively, before my decease.

Item Twenty-Four. In case any property embraced in any of the trust provisions of this will shall be under the jurisdiction of a state or country the laws of which do not permit a trust thereof to continue as long as hereinbefore provided,

then I direct that such trust as to such property shall terminate upon the death of the person or the survivor of the persons during whose life or lives my trustees are hereinbefore authorized and directed to hold said property in trust; whereupon my said trustees are directed to transfer all such property then remaining under the jurisdiction of such other state or country to the person or persons then entitled to the income thereof, in the same proportion to each as
58 such person is then entitled to enjoy the income thereof.

In every case in this will where an infant shall be entitled to the receipt of income, I authorize and empower my executors and also my trustees to accumulate during the minority of such infant so much of its share of net annual income as my said executors or trustees, as the case may be, may deem unnecessary to expend for its welfare and support, and to pay all such accumulations to such infant at the expiration of its minority, or at the expiration of the trust, if such trust shall sooner terminate.

In every case where an infant shall be entitled to the receipt of principal, unless otherwise specially provided in this will, I authorize and empower my said trustees to withhold the transfer of said principal until said infant shall have reached the age of thirty (30) years, if the trust shall last so long; if the trust shall sooner terminate, then to withhold such principal until the termination thereof.

Item Twenty-Five. In every case in this will where said trustees are required to transfer to any person any portion of the property then held in trust, said trustees are authorized and empowered in their discretion to select such property for transfer as they may see fit and transfer the whole or any undivided interest therein to such person as they may deem best, provided only the property, or the interest therein so transferred, is in the opinion of said trustees equivalent in value to what they are required to transfer to such person as aforesaid.

In every case in this will where trustees are required to pay annually to any person any net annual income or portion thereof, said trustees may in their discretion make payment to such person oftener and on account of such net annual income and as and when collected and when such net annual income for any year shall have been definitely determined, adjust and determine the balance due such person and pay the same.

In case of the death of any person entitled to any income

under this will, there shall be paid to the estate of such person, or to his or her heirs, as said executors and trustees shall determine, whatever said trustees shall determine to be equitably due out of the net annual income of the trust fund in which said person shall be interested from the end of the last year in which said income has been determined up to the time of such person's death.

Item Twenty-Six. I authorize and empower my said trustees and direct said trustees that whenever in their judgment there shall be danger that any portion or portions in my residuary estate coming to any beneficiary under this will, whether of income or corpus, as hereinbefore provided, will be dissipated or improvidently handled through intemperance or spendthrift habits, lack of business capacity, or subjection to or for any other reason or reasons, in said trustees' discretion, whether like unto those above enumerated or otherwise, to withhold from every such beneficiary under this will the whole or any and each portion of my estate coming to such beneficiary as unworthy to receive the same, all in the discretion of said trustees and to pay and transfer to every such beneficiary only so much of the portion of my estate, whether of income or corpus, otherwise coming to such beneficiary, as my said trustees shall deem advisable; and in case my said trustees shall deem it best, instead of paying and transferring to any such unworthy beneficiary or beneficiaries any portion of my estate, whether of income or corpus, themselves to expend the same or any portion thereof for the benefit or support of such unworthy beneficiary or beneficiaries, then I hereby authorize and empower my said trustees so to do.

Whatever shall have been once withheld as above provided from any such unworthy beneficiary under my will and shall not have been expended by said trustees for the benefit and support of such unworthy beneficiary, shall be paid and transferred by said trustees to such other worthy beneficiaries under my will who would have been entitled thereto in case such unworthy beneficiary had died.

Whenever and while in the judgment of my said trustees the reason or reasons for withholding the portion or portions thereof of any beneficiary, as above provided, shall have ceased to exist, then during such cessation I authorize and empower my said trustees to convey, transfer, pay over and deliver to such beneficiary any portion or portions of my estate that shall thereafter be coming to such beneficiary

under any of the provisions of this will, or to expend the same for the benefit or support of such beneficiary.

Item Twenty-Seven. I hereby nominate and appoint my friends, John A. Van Cleave of Marinette, Wisconsin, and Horace A. J. Upham of Milwaukee, Wisconsin, my sons-in-law, Harry J. Brown and J. Earl Morgan and my son, Grant T. Stephenson, executors of this will and trustees of the several trusts therein set forth and I direct that no bond or other security of any kind be required of them, or any of them, as necessary to their qualifying and entering upon their duties as executors or as trustees under this will.

I direct that my said executors and trustees shall be allowed a reasonable compensation for their services as such and shall also be allowed all their reasonable and proper expenses incurred in the administration, care and management of my estate, including a reasonable compensation to all agents and attorneys which they may find it necessary to employ to aid in the administration, care and management of said estate.

And whereas I have appointed the same persons to be
60 executors and trustees under this will, I hereby authorize and empower them to hold said offices at the same time, and to exercise the powers and discharge the duties relating to the office of trustee as well while they are holding the said office of executor as after they may be discharged from said office of executor.

Item Twenty-Eight. I give unto my said executors and trustees, respectively, full power to sell and convey and also to lease and mortgage my real estate and any and every part thereof, including any and all real estate acquired by them upon such terms and conditions and for such prices and for such periods of time, for cash or deferred payments, or partly both, and either at public or private sale, and to accept such securities and other property in payment thereof, as said executors and trustees, respectively, may deem best. I also give them full power to collect and receive the rents, profits and issues of my estate, real and personal, committed to their care and all money and property coming from the leasing, mortgaging or other disposal of any and every portion thereof; also to build, rebuild upon and otherwise improve such real estate and any and every portion thereof, and to repair and otherwise improve any building thereupon, as they shall deem best, likewise to improve and build upon any real estate acquired by them, to repair, rebuild and other-

wise improve any buildings thereon; also to sell, negotiate, exchange, hypothecate and pledge any personal property, not specifically bequeathed, left by me or thereafter acquired by them, as they shall deem best; also to invest, re-invest and keep invested all moneys that shall come in any way into their hands and not otherwise directed to be disposed of by my said will and to change from time to time all such investments, converting realty into personalty and personalty into realty, as they shall deem best and to collect and receive the principal as well as the income of all such investments and other property coming into their hands, with authority to make investments in real estate by purchase or otherwise and in the stock, notes, bonds or other obligations of corporations, either private, public or municipal, associations, trusts and individuals and whether or not such stock, notes, bonds or other obligations be secured or unsecured, as they shall deem best. Also with full authority to execute all deeds, mortgages, leases, releases, assignments, declarations, contracts, notes, bonds and other written instruments necessary, suitable or convenient, as they shall deem best to carry out the provisions of this will. Also with full authority to compromise, compound and otherwise settle any claim or claims whatsoever due to my estate or made against it by anyone whomsoever and whether any such claim is capable of being enforced in any court or not, all in such manner as my said executors and trustees shall deem best; also with authority to submit to arbitrators selected as my said executors or trustees may deem best any matter or controversy concerning my estate and to carry out the decision of such arbitrators and to appeal therefrom; also with authority

61 to extend the time of payment of any and every indebtedness due me at the time of my decease from time to time as they see fit; and I direct that they shall not be held liable in case of the loss of any such part or portion thereof by reason of any such extensions. I further declare that my said executors and trustees are not expected to convert my stocks, bonds, notes, mortgages and other securities into cash, or to enforce the collection of any loans made by me, unless my said executors or trustees deem it best so to do; and I direct that they and no one of them be held individually liable for any depreciation after my death in value of any part of my estate, however or whenever acquired, or for any loss thereto, in case they shall deem it best not to convert any of

my estate into cash or not to enforce the collection of any loans made by me or by them.

By the giving of the powers enumerated in this Item, I do not mean or intend to revoke, limit or modify any specific devise, bequest or direction contained in this will.

Item Twenty-Nine. I hereby fully authorize and empower said executors and trustees as such and in either of said capacities, to deal with and make contracts and agreements with and in regard to and loan money to, with or without security, and take additional stock or interest in any corporation, syndicate, trust, partnership, association or other concern in which my estate may be interested, either as a stockholder, owner, creditor, contributor, or otherwise and notwithstanding the fact that my said executors and trustees, or some one or more of them, may also have a personal or representative interest in such corporation, syndicate, trust, partnership, association or other concern, or be a director or directors, trustee or trustees, agent or agents, or an officer or officers thereof; such contracts, agreements, loans and subscriptions for additional stock or interest to be upon such terms and conditions and for such length of time and at such rate of interest as my said executors or trustees shall deem best; the authority and powers of my said executors and trustees with reference to such contracts, agreements, loans and subscriptions for additional stock or interest to be as full, extensive and complete as those which I would possess and could exercise in respect thereto, if living.

And I fully authorize my executors and trustees and each of them to make contracts with any other person, agent, trustee or officer, or stockholder or shareholder of any such corporation syndicate, trust, partnership, association or other concern, as I could do if living, in regard to any of the affairs thereof.

All that I require of my said executors and trustees in the premises is to act honestly and in good faith and if they so act, they shall not in any way or manner, or to any extent be liable to my estate or to any beneficiary thereof for
62 any loss or damage that may arise from or grow out of their said acts.

Item Thirty. I hereby fully authorize and empower my said executors and trustees, in either of said capacities, to organize or cause to be organized, a corporation or corporations under the laws of the state of Wisconsin and for any of the purposes speci-

fied in any such laws and also under the laws of any of the states or territories of the United States and for any of the purposes specified in any such laws and also to join with any other person or persons in the organization of any such corporation and also to subscribe for and take stock in such corporation and to pay over or transfer to any such corporation or corporations any money or property belonging to my estate of the stock of any such corporation or corporations.

Item Thirty-One. In case of the receipt by my trustees and also in a case of the receipt by my executors from any corporation, partnership, syndicate, trust, association or any other concern of any dividend or distribution of money or property, I direct and empower my trustees and executors so receiving the same, as the case may be, to examine into the source of such money or property, or both, so received and to determine whether the same has been derived from earnings made by such corporation, partnership, syndicate, trust, association or other concern, after my death, or has been derived from its capital assets, including surplus and undivided profits possessed by it at the time of my death. So much of every such dividend or distribution as my trustees or executors shall determine to have been derived from earnings made after my death shall be distributed among the beneficiaries of my will as income, and so much thereof as my trustees or executors shall determine to have been derived from such capital assets, surplus and undivided profits shall be retained by my trustees and executors a corpus or principal of my estate. I direct that the decision of my trustees and executors in either capacity in determining how much of every dividend or distribution of money and property as aforesaid shall be considered as income and how much thereof shall be considered as corpus, shall be final and conclusive.

Item Thirty-Two. Whereas I now own a controlling interest in the N. Ludington Company, I suggest, but do not command, that so long as my estate holds stock in said corporation, it would be wise in my judgment to retain a controlling interest.

Item Thirty-Three. I will and direct that all taxes, general and special, all expenses, all disbursements for fees and services of executors and their attorneys, agents and employees, and all other necessary and proper expenditures and disbursements, relating to the administration and settlement of
63 my estate, whether like those above enumerated or different therefrom for which my estate shall be liable be-

fore the entry of a decree assigning my residuary estate to my trustees and the discharge of my executors as such, shall be paid out of the corpus of my estate.

I will and direct that all taxes, general and special, all expenses of administration, all disbursements for fees and services of the trustees and of their attorneys, agents and employees, all disbursements for abstracts of title, all premiums for insurance, the cost of all repairs to property and all other necessary and proper expenditures and disbursements relating to said trust estate and the administration of said trust by said trustees, whether like those above enumerated or different therefrom, shall be paid out of the income of my estate, so far as said income will pay the same, and that the rents, issues and profits of real estate shall be first used in making such payments. In case of any extraordinary repairs to any property of said trust estate, I authorize my trustees to distribute the same over a series of years, as they shall deem best, so as not to diminish too much the income of my estate or any part thereof in any one (1) year.

Item Thirty-Four. I exempt each of my said executors and trustees from liability for the acts of the others, and direct that he shall be held liable only for losses occurring through his own willful misconduct. This exemption shall extend and apply to all trustees and executors nominated under the power hereinafter contained.

Item Thirty-Five. I empower such of the executors and trustees named in this will as shall qualify and act under this will and such of the executors and trustees of my will as shall hereafter be appointed and as shall qualify and act under this will and the survivors and survivor of them, to nominate in writing any person or persons to supply the place of any executor or executors, trustee or trustees of my will who shall die, whether in my lifetime or after my decease, or shall resign such trust, or be removed from such trust or disclaim or be unwilling or unable to act, and which nomination or nominations shall be submitted to the court having jurisdiction of my will and estate for confirmation and appointment, and which power to nominate shall be exercised as often as need be in order to secure the confirmation and appointment of the full complement of executors and trustees under this will, and upon every such appointment my estate shall fully vest in the new and old executors, or in the new executors solely, and in the new and old trustees or in the new trustees solely, as the case may be. And I declare that the powers

and discretions hereinbefore given to and invested in the executors named shall be exercisable by the executors or executor for the time being of my will, and likewise that the powers and discretions hereinbefore invested in the trustees named shall be exercisable by the trustees or trustee for the time being of my will.

64 Item Thirty-Six. In case of the insolvency of any of my executors or trustees herein named, or of any of his or their successor or successors, I direct the court having jurisdiction of my will and estate to remove from office every such insolvent executor or trustee. I authorize such court to require at any time every executor and trustee of my will to give a suitable bond for the faithful performance of his duties as such executor and trustee, if for any reason at any time said court shall deem best.

Item Thirty-Seven. The total amount of money that I authorize my executors to expend for all purposes in the matter of Item numbered Nine (9) of this will is Fifteen Thousand Dollars (\$15,000.00) and in case my executors have not fully completed all the duties entrusted to them by said Item numbered Nine (9) within one (1) year after their appointment, then I authorize my trustees to complete what said executors have not done, and I authorize said executors to turn over to my trustees all funds, papers and contracts relating to the matters in said Item numbered Nine (9) and I hereby give to my said trustees the same powers, directions and discretions I have given to my said executors in relation thereto; and if there shall be any balance left of said Fifteen Thousand Dollars (\$15,000.00), I direct that it shall be equally distributed among all the parts into which I have directed my estate to be divided.

Item Thirty-Eight. I direct that my executors and trustees, during the settlement of my estate and as long as my trustees shall have in their hands any property to administer under the trust provisions of my will, employ Miss Mary F. Stringham to render such assistance as she may be able and pay her an annual compensation of not less than Two Thousand Dollars (\$2,000.00). I mean my present secretary.

Item Thirty-Nine. In case my wife shall elect to take the provisions made for her by law instead of those made for her by my will, then I direct my trustees to postpone until after the death of my wife and until the final settlement of her estate the transfer of the portions of the principal of the parts numbered eight (8), seven (7), six (6), five (5),

four (4), three (3), two (2) and one (1) of my estate hereinbefore directed to be made sixteen (16) years, twelve (12) years and eight (8) years after the certain times mentioned in Items numbered from Twelve (12) to Nineteen (19) both inclusive, of this will: and if any one of my children or the issue of such child, or both such child and its issue, shall have received or shall be entitled to receive from my wife, or from her estate, whether she die testate or intestate, any property or thing of value, by gift, or transfer otherwise than for a consideration equivalent to the fair value thereof, or by will or intestacy, whereby there shall have been given, transferred, bequeathed, devised or transferred by operation of law, more in value to any one of my children, or to the issue of such child, or both such child and its issue, than 65 shall have been given, transferred, bequeathed, devised or transferred by operation of law to each of the other of my children or the issue of such child, or to both such child and its issue, then I direct my trustees before transferring any portion of the corpus of my estate to any one of my children, or to the issue of such child, to re-apportion among all the then existing remaining parts numbered from one (1) to eight (8), both inclusive, into which my residuary estate shall have been divided, the remainder of the property then in their hands constituting the aforesaid parts numbered from one (1) to eight (8), both inclusive, taking into consideration all such gifts, transfers, bequests and devises by my wife and inheritances from her to any of my children, or the issue of such child, or both, and also any portions of the principal of the aforesaid parts that may have been theretofore transferred by my trustees to any one of my children or to the issue of such child or to both otherwise than pursuant to any appointment under the will of any of my children, so that the aggregate amount theretofore received and thereafter to be received by each one of my children and its issue from my said trustees out of the corpus of my estate, otherwise than by appointment as aforesaid, together with what each such child and its issue shall have received or will thereafter receive from my wife or her estate as aforesaid (computing the value of every future or limited estate, income, interest or annuity, in the manner provided by law for determining the value thereof for the assessment of inheritance taxes) shall be as nearly equal in value as possible or as said trustees can make it by re-apportionment as aforesaid; meaning and intending hereby that such re-apportionment

shall be made by my trustees prior to any transfer of principal hereinbefore directed to be made four (4), eight (8), twelve (12) and sixteen (16) years after my death, if prior to any such transfer by my trustees any of my children or the issue of such child or both shall have received or shall be entitled to receive from my wife or from her estate as aforesaid more than any other of my children or the issue of such child or both shall have received or be entitled to receive from her or her estate as aforesaid; provided that my trustees in making any such re-apportionment shall disregard any property or thing of value received or to be received by any of my children or the issue of such child out of the separate property and estate owned and possessed by my wife in her own right prior to my death, and further provided that the two (2) funds of Sixty Thousand Dollars (\$60,000.00) each to be reserved for the widow of my son Isaac Watson Stephenson and for my daughter-in-law Irene Eldred Stephenson shall each be taken into account as being given to the children of my son Isaac Watson Stephenson and to my son Grant T. Stephenson, respectively.

Item Forty. I direct that the word "issue" wherever used in this will shall be construed to mean all lawful descendants to the remotest degree, such descendants to be determined according to the laws of Wisconsin and to be limited to the heirs of the body of the ancestor named.

66 I direct that in all cases the decision of the majority of my executors and the decision of the majority of my trustees, respectively, shall be taken as the decision of and be binding upon all my executors and trustees and the doing of any act in pursuance of the decision of and by the majority of my said executors and trustees, respectively, shall be of the same force and effect as if said act was done by all of said executors or trustees.

In case any portion of this will shall be held for any reason invalid, or shall for any other reason fail, I direct that the balance of the will shall be carried out the same as if such invalid portion or the portion so failing had been omitted.

In Witness Whereof, I have hereunto set my hand and seal at Marinette, Wisconsin, the Fifteenth day of June, in the year Nineteen Hundred and Sixteen (1916).

Isaac Stephenson (seal)
(1)

The foregoing instrument, written upon fifty-eight (58) sheets of paper, was, at the date thereof, signed, sealed, pub-

lished and declared by Isaac Stephenson, the testator, to be his last will and testament, in the presence of us, who, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses thereto. The said Isaac Stephenson was, at the time of executing said will, of sound mind and memory and not under any restraint to the knowledge, information or belief of any of us.

Henry C. Hornibrook, residing at Marinette, Wis.

Oscar P. Osthelder, residing at Marinette, Wis.

Fred C. Burke, residing at Marinette, Wis.

67 Know All Men By These Presents, That I, Isaac Stephenson, of the City and County of Marinette and State of Wisconsin, being in good health and of sound mind and memory do make, publish and declare the following to be a codicil to my last will and testament, which is dated the fifteenth day of June in the year Nineteen Hundred and Sixteen (1916).

First. I direct and declare that each and every gift, legacy, devise or provision in my said will whereby any money, income or property is given to or for the benefit of any person or persons, is subject to the following express condition, that is to say, that the person or persons to whom, or in the cases of trusts, for whose benefit such money, income or property is given, or who is directly or indirectly benefited by any of its provisions, shall not in any manner contest, or cause to be contested, or aid in contesting or in any manner oppose the probate of my said will or this codicil thereto, or assert in any manner, direct or indirect, before any judicial tribunal, that the same is not my last will and testament and codicil thereto, or deny or call in question before any judicial tribunal the legal validity of any of the dispositions or provisions therein contained and in case any person or persons to whom, or in the cases of trusts, for whose benefit any such money, income or property is by this will given, shall in any manner contest, or cause to be contested, or aid in contesting or in any manner oppose the probate thereof or this codicil thereto, or assert in any manner, direct or indirect, before any judicial tribunal that the same is not my last will and testament and codicil thereto, or deny or call in question before any judicial tribunal the legal validity of any of the dispositions or provisions therein contained, then in such case and in every such case, I direct that such person or persons shall be paid the sum of One Dollar (\$1.00) in

lieu of all other provisions made in this will for his or her benefit and the money, income or property which is by any provision of this will destined to or for the benefit of such person or persons and any estate, share or interest in any property, real or personal, left by me at my death, or in any estate or effects to which any such person or persons, as last aforesaid, might be or become entitled as my heir or heirs or next of kin, or otherwise, excepting, however, said last mentioned sum of One Dollar (\$1.00), shall thereupon go to and in such event, I hereby give, devise and bequeath the same to the City of Marinette, Wisconsin, in trust, for the establishment and maintenance of public parks and for the maintenance of the public library heretofore given by me to said City. In the event the said City shall decline to accept the same, then, in such event, I give, devise and bequeath the same to such of my children named in my said will, then living, and the issue, then living, of such as may have before died, leaving issue, and who shall not have contested, or caused to be contested, or aided in contesting my said will or opposed the probate thereof or this codicil thereto, or assert in any manner, direct or indirect, before any judicial tribunal, that the same is not my last will and testament
68 and codicil thereto, or denied or called in question, as aforesaid, the legal validity of any of said dispositions or provisions, share and share alike, per stirpes and not per capita, the issue of any deceased child to take the share that the parent would have taken, if living.

Second. I direct that my said will be read and construed with this codicil thereto the same as if the provisions herein contained had been originally written in said will and as so written, I do hereby re-affirm and republish the same as my last will and testament.

In Witness Whereof, I have hereunto set my hand and seal at Marinette, Wisconsin, this 21st day of June, in the year Nineteen Hundred and Sixteen (1916).

Isaac Stephenson (Seal).

The foregoing instrument, written upon three (3) sheets of paper, was, at the date thereof, signed, sealed, published and declared by Isaac Stephenson, the testator, to be a codicil to the last will and testament, dated June fifteenth, Nineteen Hundred and Sixteen (1916), in the presence of us, who, at his request and in his presence and in the presence of each other, have hereunto subscribed our names as attesting witnesses thereto. The said Isaac Stephenson was, at the time

of executing said codicil, of sound mind and memory and not under any restraint to the knowledge, information or belief of any of us.

Henry C. Hornibrook, residing at Marinette, Wis.

Oscar P. Osthelder, residing at Marinette, Wis.

Fred C. Burke, residing at Marinette, Wis.

69 Know All Men by These Presents, That I, Isaac Stephenson, of the City and County of Marinette and State of Wisconsin, being in good health and of sound mind and memory, do make, publish and declare this to be the second codicil to my last will and testament, which will is dated the 15th day of June in the year 1916, and the first codicil to which is dated the 21st day of June, 1916.

First. It is my will that the number of the executors of my will be four, and that the number of the trustees to carry out the trust thereof be four.

Second. I direct that Item Twenty-seven (27) of my will be changed by striking out therefrom the words: "and my son Grant T. Stephenson," as it is my will not to nominate and appoint him one of the executors of my will and one of the trustees of the several trusts contained in the said will.

Third. My said will as modified by said first codicil thereto and as further modified by this second codicil, I do hereby reaffirm and republish as my last will and testament.

In Witness Whereof, I have hereunto set my hand and seal to this second codicil to my will at Marinette, Wisconsin, this 16th day of January, in the year Nineteen Hundred and Seventeen (1917).

Isaac Stephenson. (L. S.)

The foregoing instrument which, with this attestation clause, consists of one sheet of paper, was at the date thereof signed, sealed, published and declared by Isaac Stephenson, the testator, to be a second codicil to his last will and testament, which will is dated June 15th, 1916, and the first codicil to which is dated June 21st, 1916, in the presence of us who, at this request, and in his presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses thereto. The said Isaac Stephenson was at the time of executing said codicil of sound mind and memory and not under any restraint, to the knowledge, information or belief of any of us:

O. P. Osthelder, residing at Marinette, Wis.

Henry C. Hornibrook, residing at Marinette, Wis.

F. C. Burke, residing at Marinette, Wis.

70 Know All Men by These Presents, That I, Isaac Stephenson, of the City and County of Marinette and State of Wisconsin, being in good health and of sound mind and memory, do make, publish and declare this to be the third codicil to my last will and testament, which will is dated the 15th day of June in the year 1916, and the first codicil to which is dated the 21st day of June, 1916, and the second codicil to which is dated the 16th day of January, 1917.

First. It is my will that the number of the executors of my will be five (5), and that the number of the trustees to carry out the trusts thereof, be five (5); and that my son, Grant T. Stephenson, shall be one of the executors of my will and one of the trustees of the several trusts contained in said will; and I hereby revoke the First and Second Items of the second codicil of my will, which second codicil is dated the 16th day of January, 1917.

Second. It is my will that Item Twenty-nine of my will, bearing date June 15th, 1916, be and hereby the same is modified by striking therefrom the words "and each of them," following the words "And I fully authorize my executors and trustees," so that said sentence shall read as follows:

"And I fully authorize my executors and trustees to make contracts with any other person, agent, trustee, or officer, or stockholder, or shareholder of any such corporation, syndicate, trust, partnership, association or other concern, as I could do, if living in regard to any of the affairs thereof."

In Witness Whereof, I have hereunto set my hand and seal to this third codicil to my will at Marinette, Wisconsin, this 15th day of May, in the year Nineteen Hundred and Seventeen, (1917).

Isaac Stephenson. (L. S.)

The foregoing instrument which, with this attestation clause, consists of two sheets of paper, was, at the date thereof, signed, sealed, published and declared by Isaac Stephenson, the testator, to be a third codicil to his last will and testament, which will is dated June 15th, 1916, and the first codicil to which is dated June 21st, 1916, and the second codicil to which is dated January 16th, 1917, in the presence of us, who, at his request, and in his presence, and in the presence of each other, have hereunto subscribed our names as attesting witnesses thereto. The said Isaac Stephenson was, at the time of executing said codicil, of sound mind and memory and not

under any restraint, to the knowledge, information or belief of any of us.

Henry C. Hornibrook, residing at Marinette, Wis.
Nicholas O. Borndahl, residing at Marinette, Wis.

UNITED STATES BOARD OF TAX APPEALS.

• • (Caption—82771) • •

ANSWER.

Filed Mar. 16, 1936.

The Commissioner of Internal Revenue, by his attorney, Herman Oliphant, General Counsel for the Department of the Treasury, for answer to the petition of the above-named taxpayer, admits and denies as follows:

I and II. Admits the allegations contained in paragraphs I and II of the petition.

III. Denies so much of paragraph III of the petition as alleges that the deficiency asserted is in the amount of the tax in controversy, and admits the remaining allegations contained in said paragraph III.

IV. Denies that the respondent, in determining the deficiency tax, committed errors as alleged in paragraph IV of the petition.

V. (a) and (b) Denies the allegations contained in subdivisions (a) and (b) of paragraph V of the petition.

(c) Admits so much of subdivision (c) of paragraph V of the petition as alleges that the Commissioner of Internal Revenue has included in the gross estate of the decedent, 72 Elizabeth S. Morgan, her portion of the value of 2,000 shares of Stephenson Redwood Co. stock, and denies the remaining allegations contained in said subdivision (c).

V. (d) Admits so much of subdivision (d) of paragraph V of the petition as alleges that the Commissioner of Internal Revenue has, in arriving at the value of the gross estate of the decedent, included the decedent's proportion of \$184,500.00 of the notes of the Stephenson Redwood Co., and denies the remaining allegations contained in said subdivision (d).

(e) and (f) Denies the allegations contained in subdivisions (e) and (f) of paragraph V of the petition.

VI. Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

Wherefore it is prayed that the determination of the Commissioner be approved.

(Signed) Herman Oliphant,
Herman Oliphant,

*General Counsel for the Department
of the Treasury*

Of Counsel:

Frank T. Horner,

*Special Attorney, Bureau of
Internal Revenue.*

RFS/y 3/14/36

73

UNITED STATES BOARD OF TAX APPEALS.

• • (Caption—82771) • •

Filed Apr
1937.

STIPULATION OF FACTS.

Filed at the Hearing April 13, 1937.

It Is Hereby Stipulated and Agreed by and between the parties to the above entitled appeal, by their respective attorneys, that the following facts shall be taken as true and correct and may be introduced as evidence of such facts at the time of the hearing of this cause, subject, however, to the right of either party to introduce other and further evidence not inconsistent with the facts herein stipulated to be true.

1. That Elizabeth S. Morgan died May 3, 1933, a citizen of the United States and a resident of the City of Oshkosh, County of Winnebago, State of Wisconsin.

2. That the Estate of Elizabeth S. Morgan, deceased, is being administered in the County Court of Winnebago County, Wisconsin.

74 3. That J. Earl Morgan, her husband, of Oshkosh, Wisconsin was duly appointed Executor of the Estate of Elizabeth S. Morgan, deceased, by the County Court of Winnebago County on the 6th day of June, 1933 as evidenced by a copy of the Letters Testamentary attached to the appeal petition in this cause as Exhibit A.

4. That Exhibit A attached to the appeal petition herein is a true and correct copy of the Letters Testamentary issued by the County Court of Winnebago County on June 6, 1933.

5. That Exhibit 1 hereto attached and made a part hereof is a true and correct copy of the Last Will and Testament of

Elizabeth S. Morgan, deceased, and admitted to probate by the County Court of Winnebago County, Wisconsin, on the 6th day of June, 1933.

6. That under date of June 15, 1916 Isaac Stephenson, the father of the decedent Elizabeth S. Morgan, signed, sealed, published and declared his Last Will and Testament. Subsequently he signed, sealed, published and declared three separate codicils thereto under the respective dates of June 21, 1916, January 16, 1917 and May 15, 1937.

7. That Exhibit D attached to the appeal petition herein is a true and correct copy of the Last Will and Testament and codicils of Isaac Stephenson, deceased, and that said Will and codicils were duly admitted to probate in the Estate of Isaac Stephenson, deceased, by the County Court of Marinette County, Wisconsin on the 7th day of May, 1918, incorporated herein by reference.

8. That Isaac Stephenson during his life time on May 12, 1917, executed a certain deed of trust to J. A. Van

Cleve and others, a true copy of which deed of trust is attached to the appeal petition herein as Exhibit C and that said deed of trust is now on file and of record in the County Court of Marinette County, Wisconsin, incorporated herein by reference.

9. That the distributions of principal directed by the said Will and codicils of Isaac Stephenson, deceased, to be made to the said Elizabeth S. Morgan at the end of four, eight and twelve years respectively after the death of Isaac Stephenson as provided in "Item Fifteen" of his said Will were in fact made. That the property remaining in said testamentary trust, as of the date of the decedent's death, under "Item Fifteen", other than the property previously distributed to the decedent as aforesaid, was included in the gross estate by the Commissioner in determining the deficiency.

10. That Isaac Stephenson died March 15, 1918, a citizen of the United States and a resident of the City and County of Marinette, Wisconsin.

11. That the decedent, Elizabeth S. Morgan, by her Last Will and Testament exercised the powers of appointment given her under the deed of trust of Isaac Stephenson, deceased, and to that part of the property which she would have received under the Last Will and Testament of Isaac Stephenson which was to be transferred to her if she should live sixteen years after the death of the said Isaac Stephenson.

12. That an estate tax return was heretofore filed in the

estate of Elizabeth S. Morgan, deceased, which disclosed
76 an estate tax in the amount of \$8,800.89. That thereafter the Internal Revenue Agent made an examination and filed his report, as a result of which certain recommendations were proposed and thereafter a protest was filed by the Executor of the estate of Elizabeth S. Morgan and a hearing had before the Revenue Agent in Charge. Later conference was had with representatives of the Bureau of Internal Revenue and as a result of such hearing and conference, a determination was made by the Commissioner of Internal Revenue and a deficiency was proposed in accordance with the Commissioner's letter of November 12, 1935 directed to J. Earl Morgan, Executor, a true copy of which letter and determination is attached to the appeal petition herein as Exhibit B, incorporated herein by reference.

13. That in accordance with Commissioner's letter of November 12, 1935, the notes of the Stephenson Redwood Company, held by the trustees under the deed of trust of Isaac Stephenson were valued at \$184,500.00 and the stock of the Stephenson Redwood Company, held by the trustees under the deed of trust of Isaac Stephenson was valued at \$454,448.78.

14. That it is now agreed that the true market value on the date of decedent's death May 3, 1933, of the tract of timber owned by the Stephenson Redwood Company and comprising its entire assets was \$375,000.00. That the true market value of the notes of the said Stephenson Redwood Company held by the trustee under the deed of trust of Isaac Stephenson was on said latter date \$184,500.00; that the true market value of the stock of said Stephenson Redwood Company held by the said trustees on said latter date was \$184,488.72. That the difference between the total value of
77 said notes and stock and the total value of the track of timber, which was the only asset of the said Stephenson Redwood Company, is represented by other obligations of the company.

15. That a part of the deficiency proposed by the Commissioner's letter of determination of November 12, 1935 was predicated upon the disallowance of attorneys' fees and Executor's fees and it is now stipulated that there has been heretofore paid by the Executor as and for attorneys' fees and disbursements on behalf of the estate of Elizabeth S. Morgan, deceased, the sum of \$2,785.12; that there has been heretofore paid by the Executor on behalf of the Estate of Elizabeth S.

Morgan, deceased, as Executor's fees and traveling expenses on behalf of the said estate, the sum of \$2,185.64 and that said sums are proper deductions against the gross estate of the said decedent.

16. That the Statutes of the State of Wisconsin in full force and effect on the date of death of the decedent, Elizabeth S. Morgan, provided in part as follows:

"232.05 General power. A power is general when it authorizes the alienation in fee, by means of a conveyance, will or charge of the lands embraced in the power, to any alienee whatever."

"232.06 Special power. A power is special:

(1) When the person or class of persons to whom the disposition of the lands under the power to be made are designated.

(2) When the power authorizes the alienation by means of a conveyance, will, or charge of a particular estate or interest less than a fee."

17. That Section 2105 and 2106 of the Wisconsin Statutes of 1917 were identical with the sections above quoted except as to the section numbers thereof.

78 18. It Is Stipulated and Agreed that the only question now in dispute is whether or not the powers of appointment under the said deed of trust and under the said Last Will and Testament of Isaac Stephenson, as above referred to, are general or special powers within the meaning of Section 302 of the Revenue Act of 1926; provided, however, that nothing herein contained shall deprive the petitioner of proper credit and deduction for State Inheritance taxes upon submission that the State Inheritance taxes have been paid.

Arthur M. Kracke,

Counsel for Petitioner.

Morrison Shafroth,

*Chief Counsel for the Bureau of
Internal Revenue.*

Dated: April 12, 1937.

EXHIBIT 1.

I, Elizabeth S. Morgan, of the City of Oshkosh, Winnebago County, Wisconsin, being of sound and disposing mind and memory, do make, publish and declare this my last will and testament, hereby revoking any and all former wills, codicils, bequests and devises and other testamentary dispositions of every kind, by me heretofore made.

First: I hereby give, bequeath and devise to my husband J. Earl Morgan, my home at No. 610 Algoma Street in the City of Oshkosh, Winnebago County, Wisconsin (intending hereby to include all the land, buildings and premises used in connection therewith and as a part thereof, of any and every kind), and my summer home at Pau-ko-tuk, in the Town of Black Wolf, Winnebago County, Wisconsin (intending hereby to include all the land, buildings and premises used in connection therewith and as a part thereof, of any and every kind), together with all the furniture, fixtures, fittings and personal effects therein and all my household effects and personal property used in connection with said home and summer home and all my ornaments, jewelry, clothing and wearing apparel, of any and every kind, excepting only such as may hereinafter herein or otherwise be specifically disposed of, in case he shall survive me, to him, his heirs and assigns, absolutely and forever.

In case my husband shall not survive me, then and in that case I do hereby give, bequeath and devise all of said property, hereinbefore mentioned, of any and every kind, to my daughter, Beatrice M. Chapman, to her, her heirs and assigns absolutely and forever.

If neither my husband nor my daughter Beatrice M. Chapman survive me, then and in that case I do hereby give, bequeath and devise all of said property of any and every kind, to my grandchildren, Elizabeth M. Chapman, Katherine Chapman and Eleanor Chapman, share and share alike, and to them, their heirs and assigns absolutely and forever.

Second: I do hereby give and bequeath to my daughter, Beatrice M. Chapman, if she survive me, the sum of Ten Thousand Dollars (\$10,000.00), payable out of my personal estate.

Third: I do hereby give and bequeath to my granddaughter Elizabeth M. Chapman, if she survive me, the sum of Ten

Thousand Dollars (\$10,000.00) payable out of my personal estate.

Fourth: I do hereby give and bequeath to my granddaughter Katherine Chapman, if she survive me, the sum of Ten Thousand Dollars (\$10,000.00) payable out of my personal estate.

Fifth: I do hereby give and bequeath to my granddaughter Eleanor Chapman, if she survive me, the sum of Ten Thousand Dollars (\$10,000.00) payable out of my personal estate.

80 Sixth: I do hereby give and bequeath to my son-in-law, Arthur B. Chapman, if he survives me, the sum of Two Thousand Dollars (\$2,000.00) payable out of my personal estate.

Seventh: I do hereby give and bequeath to my sister, Harriet Skidmore of Marinette, Wisconsin, if she survive me, the sum of Ten Thousand Dollars (\$10,000.00) payable out of my personal estate.

Eighth: I do hereby give and bequeath to my niece Jane Skidmore, of Marinette, Wisconsin, if she survive me, the sum of Five Thousand Dollars (\$5,000.00) payable out of my personal estate.

Ninth: I do hereby give and bequeath to Mrs. I. W. Stephenson, if she survive me, the sum of Three Thousand Dollars (\$3,000.00) out of my personal estate.

Tenth: I do hereby give and bequeath to my sister-in-law, Grace M. Davies, if she survive me, the sum of Two Thousand Dollars (\$2,000.00) payable out of my personal estate, hoping that it will be used for an European trip.

Eleventh: I do hereby give and bequeath to my brother-in-law, Edward C. Crawford, if he survives me, the sum of One Thousand Dollars (\$1,000.00) payable out of my personal estate.

Twelfth: I do hereby give and bequeath to my friend, Mrs. John S. Gittins, of DePere, Wisconsin, if she survive me, the sum of Twenty-Five Hundred Dollars (\$2500.00) payable out of my personal estate.

Thirteenth: I do hereby give and bequeath to my friend, Margaret Fraker, of Oshkosh, Wisconsin, if she survive me, the sum of Three Thousand Dollars, (\$3,000.00) payable out of my personal estate.

Fourteenth: I do hereby give and bequeath to my friend, Mrs. A. L. Osborn, the sum of Three Thousand Dollars

(\$3,000.00) if she survive me, payable out of my personal estate.

Fifteenth: I do hereby give and bequeath to Agnes Bender of Oshkosh, Wisconsin, a faithful employee for a great many years, the sum of Twenty-Five Hundred Dollars (\$2500.00) if she survive me, payable out of my personal estate.

Sixteenth: I do hereby give and bequeath to Sam Stauffer, 399 Vine Street, Oshkosh, Wisconsin, a faithful employee, the sum of Twenty-Five Hundred Dollars (\$2500.00), if he survives me, payable out of my personal estate.

Seventeenth: I do hereby give and bequeath to the First Congregational Church of Oshkosh, Wisconsin, the sum of Five Thousand Dollars (\$5,000.00) payable out of my personal estate.

81 Eighteenth: I do hereby give and bequeath to Rev. David F. Bent, pastor of the First Congregational Church of Oshkosh, Wisconsin, the sum of Five Hundred Dollars (\$500.00) if he survives me, payable out of my personal estate.

"My personal estate" as used in this will means my real and personal property not herein specifically devised and does not include any property of which I may have the power of disposal by power of appointment under the will of my father or under his trust deed hereinafter mentioned.

Nineteenth: I do hereby give and bequeath to the Stephenson Public Library of Marinette, Wisconsin, the painting of the Battleship "Wisconsin".

Twentieth: Upon the death of my husband and myself it is our wish that the needle point furniture in our drawing room should go to the Oshkosh Public Museum, known as the Sawyer Foundation, and I do hereby, in such case and for such purpose, give and bequeath the same to the City of Oshkosh on the death of my husband.

Twenty-First: In a separate memorandum delivered to the Executor of this my last will and testament I have indicated my wish and will as to the disposal of certain items of jewelry, household furniture and other personal property among my friends and relatives, which memorandum is hereby referred to and made a part of this my last will and testament, and the articles therein mentioned are excepted from the provisions of that clause or subdivision of this will numbered "First".

Twenty-Second: Under the last will and testament of my father, Isaac Stephenson, dated June 15, 1916, and which with the several codicils thereto, has been duly admitted to probate

in the County Court of Marinette County, Wisconsin, In Probate, certain real, personal and mixed property (in said will called "all the rest, residue and remainder of my estate, etc.") was given, bequeathed and devised unto Trustees, the survivors of them and their successors in trust, and under said will and under "Item Ten" of said last will and testament of my father, and said trustees were directed and empowered to divide the same into parts of equal value and to number the parts from one to eight, or nine, as the circumstances might require under the terms of said will, and by said will and by "Item Fifteen" thereof said trustees were directed to pay to me the net annual income from part numbered Five (5) and to make certain payments of principal and certain distributions therein provided, and there was given, devised and bequeathed to the appointee or appointees of mine by my last will and testament, all property of any nature and kind in the hands of my said trustees at the time of my death, constituting said Part Five (5) and all property that should thereafter be added to said Part Five (5) from any other part;

Now therefore, by virtue of said power of appointment and in accordance with the provisions of said last will and 82 testament of my father, Isaac Stephenson, I do hereby nominate, constitute, authorize and appoint my husband, J. Earl Morgan, in case he shall survive me, to receive all property of any and every nature and kind in the hands of said trustees under the will of my father, at the time of my death, or thereafter coming to me under said will of my father, constituting said Part Five (5) and all property that may have been heretofore or shall hereafter be added to said Part Five (5) from any other part, and I do hereby authorize him to give full receipts therefor, and I do hereby authorize, direct and empower said trustees under my father's said will to pay over and transfer all of said property to my said husband, J. Earl Morgan, he to have and hold the same as trustee, as hereinafter set forth, and in case my said husband survive me, as aforesaid, I do hereby give and bequeath all of said property of any and every nature and kind in the hands of said trustees under the will of my father at the time of my death or thereafter coming to me under said will of my father, constituting said Part Five (5) and all property that may have been heretofore, or shall hereafter be added to said part Five (5) from any other part to my husband, J. Earl Morgan, in trust, nevertheless, for the following uses and purposes:

To handle, manage, care for, invest and reinvest the same from time to time and after the payment out of the principal, of estate and inheritance taxes as hereinafter provided and in the cases hereinafter provided to pay over to himself individually, and for his own use and behoof, the whole income thereof or of the remainder thereof from time to time as he may in his discretion and judgment determine during the full term of his natural life, and at his death, the principal then remaining I do give and bequeath to my sister, Harriet Skidmore, my nephew, Isaac Watson Stephenson and my niece Mary S. Whitehill, to be equally divided among them, provided, however, that if any one of them shall die before the death of my said husband then and in that case the surviving children of any of them so dying shall be entitled to have and receive the full share in each case that the parent of such children would have received if living.

Provided further, that if any one or more of said three legatees above named shall die without leaving children surviving him or her, that then the share of such deceased legatees shall go to the other legatee or legatees equally, or if either or both of the other legatees are then dead or shall thereafter die, to the children of any deceased legatee or legatees, the intention being that the children of any deceased legatee in any such case shall receive the same share that the parent of such children would have taken if surviving.

If my husband, J. Earl Morgan, does not survive me, then and in that case I hereby nominate, constitute, authorize and appoint my sister Harriet Skidmore, my nephew Isaac Watson Stephenson and my niece Mary S. Whitehill, provided, however, that in case of the death of any one of them then the children of the one so dying shall be entitled to have and receive the same share and interest that their parent would have had if living, to receive all property of any nature and kind in the hands of said trustee at the time of my death,
83 constituting said Part Five (5) and all property added to said part Five (5) and any part heretofore or hereafter added to said part Five (5) from any other part and to receipt therefor, and I do hereby authorize, direct and empower said trustees under my father's said will to pay over and transfer all of said property to them in such case, subject to the payment of inheritance and estate taxes as hereinafter provided; and in case my husband, J. Earl Morgan does not survive me, I give and bequeath to my said sister Harriet Skidmore, my

nephew Isaac Watson Stephenson and my niece Mary S. Whitehill, and in case any of them shall be deceased then the share of such one shall go to their surviving children, such children taking the same share that their parent would have taken if living, all of said property to go subject to the payment of estate and inheritance taxes as hereinafter provided.

Provided further, that if any one or more of said three legatees above named shall die without leaving children surviving him or her, that then the share of such deceased legatee shall go to the other legatee or legatees equally, or if either or both of the other legatees are then dead or shall thereafter die, to the children of any deceased legatee or legatees, the intention being that the children of any deceased legatee in any such case shall receive the same share that the parent of such child would have taken if surviving.

Twenty-third: Under the Deed of Trust dated May 12, 1917, made by my father, Isaac Stephenson to J. W. Van Cleve, Horace A. J. Upham, Harry J. Brown, J. Earl Morgan and Grant T. Stephenson, trustees, he transferred to them and their successor or successors and survivors in trust, certain property described in said trust deed more particularly described under subdivision or paragraph numbered 27 of said instrument, to have and to hold during the continuance of the life of his wife Martha E. Stephenson and himself, and twenty-one years thereafter, and as therein otherwise provided, with provisions upon his death, that the said trustees should divide the trust property in their hands into nine parts and number said parts from One to Nine, both inclusive, and further provided among other things that after his death and during the continuance of the trust, the trustees should pay annually to me the net annual income from said part numbered Five (5), and the principal if I should be living at the termination of the trust, and further provided that if I should die prior to the termination of said trust that then said trustees should pay annually the net annual income from said Part Five (5) to such person or persons as I might appoint by my last will and testament, and that at the termination of the trust said trustees should transfer the property then in their possession, constituting said part Five (5) to such person or persons as I might appoint in the manner aforesaid;

Now therefore, by virtue of said power of appointment and the provisions of said trust deed so made by my father as aforesaid dated May 12, 1917, I do hereby appoint my hus-

band, J. Earl Morgan, to have and receive the annual income after my death of said Part Five (5) as mentioned and described in said trust deed during the full term of said trust or until his death if he shall die before the termination of said trust, my said husband paying out of the same Two Hundred Dollars (\$200.00) per month to our daughter Beatrice M. Chapman, and I do hereby give, bequeath and devise the same as above specified to him for the term of said trust, or until his death if he shall die before the termination thereof; if my said husband shall not survive me, or on his death in case he does survive me and the trust shall not have been terminated, the trustees under the said trust deed so made by my father shall pay the annual income thereof during the balance of the trust period to my sister Harriet Skidmore, my nephew Isaac Watson Stephenson and my niece Mary S. Whitehill, in case they survive me, and out of the said income they shall first pay to my daughter Beatrice M. Chapman the sum of Two Hundred Dollars (\$200.00) per month during the continuance of the trust and the remainder shall be equally divided between them, and in case of the death of any one of them, then the children of the one so dying shall be entitled to have and receive the same share and interest that their parent would have had if living; provided, further, that if any one or more of said three legatees above named shall die without leaving children surviving him or her, that then the share of such deceased legatee shall go to the other legatee or legatees equally, or if either or both of the other legatees are then dead or shall thereafter die, to the children of any deceased legatee or legatees, the intention being that the children of any deceased legatee in any such case shall receive the same share that the parent of such children would have taken if surviving.

At the termination of said trust said trustees under my father's said Deed of Trust shall pay to and transfer to said Harriet Skidmore, Isaac Watson Stephenson and Mary S. Whitehill the property then in the possession of said trustees constituting said Part Five (5), provided that if any one of them be then deceased the children of such deceased person shall have and receive the same share that their parent would have had if living, and I do hereby appoint the said Harriet Skidmore, Isaac W. Stephenson and Mary S. Whitehill, and the children of any one of them that may be then deceased, as the persons to receive and have the same and to receipt there-

for, and I do hereby give and bequeath the same to them and to the children of any deceased one of them as aforesaid.

Provided further, that if any one or more of said three legatees above named shall die without leaving children surviving him or her, that then the share of such deceased legatee shall go to the other legatee or legatees equally, or if either or both of the other legatees are then dead or shall thereafter die, to the children of any deceased legatee or legatees, the intention being that the children of any deceased legatee in any such case shall receive the same share that the parent of such children would have taken if surviving.

85 It being my intention and will that after my death and after the death of my husband the said three legatees, or the survivor or survivors of them, and the children of any deceased one of any of them, shall have the income, after the payment of Two Hundred Dollars (\$200.00) per month to Beatrice M. Chapman if the trust be not then terminated, until the termination thereof, the children of any one of the said three deceased legatees having and receiving the same share that their parent would have had if living, both of income and principal; and that after my death and my husband's death, or at the final termination of the trust, occurring after my death, the property then in the possession of the trustees, or their successors, constituting said Part Five (5) shall go to said Harriet Skidmore, Isaac Watson Stephenson and Mary S. Whitehill, and in case any one of them be then deceased to the children of such deceased one, such children having and taking the same share that their parent would have had if living, and in case of the prior death of any one of said three legatees without children the share of such legatee going to the survivors of said three legatees and the children of any of the deceased one of said legatees, such children of any deceased legatee taking the same share that their parent would have taken if living.

Twenty-fourth: In case any of the principal of said Part Five (5) under the said last will and testament of my father, as hereinbefore provided, shall by virtue of the appointments and provisions of this my last will and testament be paid over to and received by my husband, J. Earl Morgan, as trustee as hereinbefore provided, during his lifetime, for the purposes hereinabove set forth, then I do hereby provide, direct, determine and will that he may as such trustee retain any or all of the property in the same shape and in the same investments that the same are received by him, all in his discretion

and judgment and determination; subsequent investments shall be made in properties and securities suitable for the investment of trust funds under the laws of the State of Wisconsin in force at the time of making such investments.

My said trustee and his successor or successors in the trust shall have and are hereby given full power and authority to determine and finally decide whether any dividend or dividends received on any stock, of any kind, or on and from any interest in stock or on and from any other securities, are capital or income, irrespective of whether the same are paid out of current earnings or surplus paid in or earned and set aside before or after my death, and the said determination of my said trustee, whether evidenced in writing or by his act or acts in paying or distributing the same or setting the same aside, or however evidenced, shall stand and be as the final determination and determinations of any such question or questions and there shall be no appeal therefrom or review thereof in any manner or by any body, judicial, tribunal or court of any kind.

86 It being my intention to have the decision of whether said distributions or dividends are capital or income decided absolutely and forever by my said trustee and without regard to the fact that he may be in any way interested therein.

In case all of the three legatees mentioned in clauses or subdivisions numbered Twenty-second and Twenty-third of this my last will and testament, viz, my sister Harriet Skidmore, my nephew Isaac Watson Stephenson and my niece Mary S. Whitehill, and their children, shall die prior to their, or any of them, or any of their children becoming entitled under the provisions of said numbered clauses or subdivisions of my will to receive any or all of the income or principal as in said respective clauses or subdivisions numbered Twenty-second and Twenty-third provided, then and in that case I do hereby name, constitute, authorize and appoint the then surviving heirs of my father, Isaac Stephenson, taking the same by right of representation and per stirpes and not per capita, to receive and have any and all right and interest and title to income or property which would have accrued to any of said three legatees, and the children of such legatees, from the income or principal from and of said Parts Five (5) under my father's last will and testament, and under his said Deed of Trust of May 12, 1917, as the said three legatees named, or their children, would have been entitled to receive,

and under the same provisions, provided, however, that this shall not apply to any interest of any of the said three named which would go to their children, if any surviving them, as hereinbefore provided; and I do hereby authorize and direct the trustees under the last will and testament of my father and the trustees under the said Deed of Trust of my father dated May 12, 1917, in such cases and at such times only to pay to the surviving heirs of my father, Isaac Stephenson, the said income or said property constituting said Parts Five (5) as would have been paid over to the said three legatees, or their children under the terms and at the times and in accordance with the provisions hereinbefore made, and in case of the death of the said Harriet Skidmore, Isaac Watson Stephenson and Mary S. Whitehill, or any of them, without children surviving any of them, I do hereby so give and bequeath the same to the said heirs of my father Isaac Stephenson, to the end and intending that the said heirs of my father, Isaac Stephenson, shall have all of the interest in the income and principal which said three named legatees, or their children would have had.

It is my will and I do hereby provide that the gifts, bequests, legacies and devises in this my will in clause or provisions numbered "First to Twenty-first", both numbers inclusive, shall be first paid to the various legatees and devises therein named without the deduction therefrom of any estate or inheritance tax, state or federal, or otherwise, therefrom.

It is my will, and I do hereby provide that any and all estate and inheritance taxes, State, Federal and otherwise, 87 shall be first paid out of the remainder of my "personal estate" as hereinbefore defined, and including any increase in my said "my personal estate" hereafter and prior to my death, and it is further my will, and I do hereby direct that if the remainder of "my personal estate" (after paying all legacies and devises in this my will numbered from "First" to "Twenty-first", both numbers inclusive) is not sufficient to pay all estate and inheritance taxes of every kind, State, Federal and otherwise, on all the legacies, gifts, bequests, devises and provisions herein made, including any and all estate or inheritance taxes, State, Federal or otherwise, on any powers of appointment and estate or property passing thereunder, that then and in such case the balance of all such estate and inheritance taxes, State, Federal and otherwise, be paid out of the principal of part five, and the additions thereto, of which I have the power of appointment under

the will of my father, Isaac Stephenson, and which power I have hereinbefore exercised in this my last will and testament, and in case the principal thereof shall pass, and go to my husband as trustee as hereinbefore provided, he is hereby directed and authorized to pay out of the principal of such part and the additions thereto existing at the time of my death, if any, the balance of any and all estate and inheritance taxes, State, Federal and otherwise; and in case of his death before receiving said part and the same going or passing hereunder to others, the same shall be charged for the benefit of my estate and the executor of this my last will and testament and of all those interested therein, with the payment of the balance of all such estate and inheritance taxes, State, Federal and otherwise as shall remain unpaid after applying to the payment thereof the balance of "my personal estate" remaining after the payment of all gifts, bequests, legacies and devises mentioned and described in provisions numbered "First" to "Twenty-first", both numbers inclusive.

Twenty-fifth: All the rest, residue and remainder of my estate of every kind, real, personal and mixed, and wherever situated, after the payment of the bequests, legacies, devises hereinbefore provided, and after the payment of all state and federal inheritance and estate taxes, as hereinbefore provided, and including any and all lapsed or void legacies or bequests of any and every kind (except as hereinbefore otherwise provided), I do hereby give and bequeath and devise to my husband, J. Earl Morgan.

Twenty-sixth: I do hereby nominate, constitute and appoint my husband, J. Earl Morgan, executor of this my last will and testament, and I do request and direct that he be exempted from giving any bond or other security as such executor or as trustee hereunder.

In case my husband should die before I do, then and in that case I do hereby nominate, constitute and appoint the First Trust Company in Oshkosh, a corporation organized and existing under the laws of the State of Wisconsin, executor of this my last will and testament, and do request and direct that it be exempted from giving any bond as such executor or as trustee hereunder in any way.

In Witness Whereof, I have hereunto set my hand and seal this 20th day of April, A. D. 1933.

Elizabeth S. Morgan. (Seal)

Signed, sealed, published and declared by the aforesaid testatrix, Elizabeth S. Morgan, as and for her last will and

testament, in the presence of us, who thereupon at her request, in her presence, and in the presence of each other have hereunto signed and subscribed our names as attesting and subscribing witnesses.

Lilla M. Fulley Residing at Oshkosh, Wisconsin.

R. Morris Redford Residing at Oshkosh, Wisconsin.

89 It Is My Wish and Will That the Following Items of Personal Property Go to the Several Parties as Hereinafter Set Forth, and I Hereby Direct My Executor to Give to Each of Them the Items Mentioned Below:

To Hattie S. Skidmore my sapphire and diamond ring, the oil painting of my mother and the miniature of my mother.

To Isaac Watson Stephenson the oil painting of my father, the miniature of my father and my "Battleship" locket.

To Mary S. Whitehill my three-diamond ring.

To Mary S. Brown my diamond and sapphire pin and marble bust from Venice.

To Georgiana Ludington my diamond and ruby pin.

To Margaret S. Hodgins my pair of blue Sevres vases.

To Mrs. Frank T. Murray, of Evanston, Illinois my Mosaic luncheon set from Naples.

To Beatrice M. Chapman my string of pearls to have during her lifetime and be left by her to Elizabeth M. Chapman.

To Beatrice M. Chapman my diamond wrist watch.

To Elizabeth M. Chapman my pearl ring.

To Katherine Chapman my sapphire and diamond bracelet.

To Eleanor Chapman my diamond and emerald ring.

To Alice L. Osborn my Alencon lace luncheon set.

To Margaret Fraker my Perugia linen luncheon set.

To Grace M. Davies my Mosaic cloth and napkins.

To Mrs. Arthur C. Wells, of Menominee, Michigan, my Venetian cloth and napkins.

To Erna Harmon my orchid enamel dresser set.

To Henrietta Brown my four-yard dinner cloth embroidered and with lace inserts, with napkins.

To Floretta Schriber my print over my writing desk.

To Nellie Downes my marble plaque in the parlor.

Elizabeth S. Morgan (Seal)

Dated this 20th day of April, A. D. 1933.

In Presence of

Lilla M. Fulley

R. Morris Redford.

90

UNITED STATES BOARD OF TAX APPEALS.

• • (Caption—82771) • •

Promulgated
Sept. 3

Promulgated September 30, 1937.

Decedent, a resident of the State of Wisconsin, and the donee of two powers of appointment, died May 3, 1933. The powers were created by decedent's father, a resident also of the State of Wisconsin. The instruments creating the powers provided that the income from the properties was to be paid to decedent for life, remainder "to such person or persons as she may appoint by her last will and testament" or, in case she failed to exercise the powers, "to her issue surviving." Decedent exercised the powers by will in favor of her husband. *Held*, under the applicable law of the State of Wisconsin, the powers were "general", and the property passing thereunder is includable in decedent's gross estate under section 302 (f) of the Revenue Act of 1926, as amended by section 803 (b) of the Revenue Act of 1932.

A. M. Kracke, Esq., for the petitioner.

H. F. Noneman, Esq., and *Frank T. Horner, Esq.*, for the respondent.

OPINION.

ARUNDELL: Petitioner seeks the redetermination of a \$43,977.93 deficiency in estate tax. All the issues, except one, have been agreed upon by stipulation and effect will be given thereto under Rule 50. The issue remaining is whether two certain powers of appointment were "general" as determined by respondent, or "special" as contended for by petitioner. The parties filed a stipulation of facts which we incorporate herein by reference and briefly summarize only those facts which are material to a clear understanding of the issue we are to decide.

The decedent, Elizabeth S. Morgan, died testate May 3, 1933, a citizen of the United States and a resident of the State of Wisconsin, and petitioner is the duly appointed executor of her last will and testament. Isaac Stephenson, decedent's father, died testate on March 15, 1918. He was also a citizen of the United States and a resident of the State of Wisconsin. By his last will and testament and several codicils thereto, he conveyed certain property in trust for the benefit of his children. The children were to receive the in-

come annually and a certain portion of the principal at the end of four, eight, and twelve years after his death, and the entire remaining principal at the end of sixteen years after his death, provided they were living at the end of each of the four stated periods. The trust estate was divided into nine parts, part numbered five being conveyed in trust for decedent's benefit as follows:

Item Fifteen: I direct said trustees to pay to my daughter Elizabeth S. Morgan annually the net annual income from part numbered five (5) into which my trustees shall have divided my estate

I give, devise and bequeath to the appointee or appointees of my daughter Elizabeth S. Morgan by her last will and testament all property of any nature and kind in the hands of my said trustees at the time of her death constituting said part five (5)

The trust further provided that, should decedent die without exercising the power, then whatever portion of the principal remained should go to her issue, and, in the event of her death without issue, then such remaining portion of the principal should be equally divided and distributed among the other remaining parts into which the estate was divided.

On May 12, 1917, Isaac Stephenson executed a deed of trust reading in part as follows:

7. After my death and during the continuance of the trust hereby created, said Trustees shall pay annually to my daughter Elizabeth S. Morgan the net annual income from said part numbered five (5).

If my daughter Elizabeth S. Morgan shall be living at the time of the termination of this trust, said Trustees shall transfer to her all property then in their possession constituting said part five (5).

If my daughter Elizabeth S. Morgan shall die prior to the termination of said trust, then said Trustees shall pay annually the net annual income from said part five (5) to such person or persons as she may appoint by her last will and testament duly admitted to probate, and at the termination of this trust said Trustees shall transfer the property then in their possession constituting said part five (5) to such person or persons as she may appoint in the manner aforesaid.

If my daughter Elizabeth S. Morgan, dying as aforesaid, should fail to make such appointment then and in any such event the annual income from said part five (5), . . . shall be paid annually by said Trustees to her issue

surviving . . . and at the termination of said trust, said Trustees shall transfer all the property then in their possession, constituting said part five (5), . . . to the then surviving issue of my said daughter . . .

During her life decedent received the distributions payable to her at the end of the fourth, eighth, and twelfth years after the death of her father, as provided for in his will, but
91 she did not receive the distribution payable to her at the end of the sixteenth year, owing to the fact that she only lived fifteen years, one month, and eighteen days after her father's death.

By her last will and testament decedent exercised the power of appointment under her father's will as to that portion of the property which she would have received at the end of the sixteen years after her father's death, had she lived, and she also exercised the power of appointment given her by her father's deed of trust, the appointments being in the following words:

Twenty-Second: Under the last will and testament of my father . . . I do hereby nominate, constitute, authorize and appoint my husband, J. Earl Morgan . . .

Twenty-Third: Under the Deed of Trust dated May 12, 1917, . . . I do hereby appoint my husband, J. Earl Morgan . . .

The respondent determined that both powers which decedent exercised by will were "general" powers of appointment; that the value of the property passing under such powers was \$41,212.82 and \$325,613.51, respectively; and that these values should be included in decedent's gross estate under section 302 (f) of the Revenue Act of 1926, as amended by section 803 (b) of the Revenue Act of 1932.

Petitioner contends that the two powers in question were "special" powers rather than "general" powers, as was determined by the respondent. Petitioner does not question the respondent's determination of the value of the property passing under the powers.

Section 302 (f) of the Revenue Act of 1926, as amended by section 803 (b) of the Revenue Act of 1932, provides in part as follows:

Sec. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated . . .

(f) To the extent of any property passing under a gen-

eral power of appointment exercised by the decedent (1) by will . . .

It has been held that in determining the nature and effect of powers we look to the law of the state having jurisdiction, *Leser v. Burnet*, 46 Fed. (2d) 756; *Christine Smith Kendrick et al., Executrices*, 34 B. T. A. 1040, 1044. In this case the powers were created while the donor was a resident of Wisconsin; the donee was a resident of that state; the property affected is in that state, and the estate of the deceased donee is being administered in the courts of that state.

The statutes of Wisconsin in force when the powers herein were created and when they were exercised define general and special powers as follows:

232.05 General power. A power is general when it authorizes the alienation in fee, by means of a conveyance, will or charge of the lands embraced in the power, to any alienee whatever.

232.06 Special power. A power is special: (1) When the person or class of persons to whom the disposition of the lands under the power to be made are designated. (2) When the power authorizes the alienation by means of a conveyance, will, or charge of a particular estate or interest less than a fee.

These provisions are held by the Wisconsin Supreme Court to apply to both real and personal property. *Will of Zweifel*, 194 Wis. 428; 216 N. W. 840; *Cawker v. Dreutzer*, 221 Wis. 401; 221 N. W. 401, 413.

The two powers here appear to us to come squarely within the above definition of general powers. Each of them "authorizes the alienation in fee, by means of a . . . will . . . to any alienee whatever." They do not contain the specified elements that mark special powers. They do not designate the person or class that may be appointed (232.06 (1)); they do not limit the estate that may be alienated to a particular estate or an interest less than a fee (232.06 (2)). Consequently, it is our opinion that these powers, fitting exactly as they do in the statutory definition of general powers, must be held to be general powers under the law of Wisconsin.

In *Cawker v. Dreutzer*, *supra*, the Supreme Court of Wisconsin states that the Wisconsin statute on powers, being "derived by adoption from New York, should have the same interpretation here as there . . ." The statutes of the two states are almost identical. See sec. 134, Real Property Law, McKinney's Consolidated Laws of New York. The

courts of New York have construed powers such as are under consideration in this case to be general powers. In the case of *In re Lather's Will*, 137 Misc. Rep. 222; 243 N. Y. S. 380, there was a testamentary trust to pay the income to the testator's son for life and then to distribute the corpus to the son's appointees designated by will. The power to appoint was exercised and the court held that "it was a general power exercised by will." On similar facts in *Farmers' Loan & Trust Co. v. Shaw*, 56 Misc. Rep. 201; 107 N. Y. S. 337, it was held that the power was "a general power of appointment without limitation." An early New York case, *Dana v. Murray*, 122 N. Y. 604; 26 N. E. 21, uses almost literally the language of the Wisconsin statute in defining a general power. The definition is, "It is general where it authorizes the alienation in fee by means of a conveyance, will, or charge of the lands embraced in the power to any alienee whatever." These holdings of the New York courts applying their similar statute afford substantial support for our view that the powers in this case are general powers.

92 The case of *Cawker v. Dreutzer*, *supra*, is said by petitioner to be authority for holding these powers to be special powers. In that case there was a testamentary trust to pay the income to plaintiff's mother for life, then to the plaintiff for life with a power of appointment as to the corpus, to be exercised by will. In a suit brought by the donee of the power the two main questions presented were, first, whether the power of appointment was valid, and, second, if the power was valid, whether it gave the donee complete and absolute title in the property. Under the second point the theory of the plaintiff was that there was a merger of her life estate and of her power of appointment. On the first point the court held the power to be valid. In discussing the second point the court said in part:

Neither is the power a general power, as defined in section 232.05, but is a special power under subdivision (2), §232.06, because it embraces an interest less than a fee. The petitioner points to the quoted language in support of the contention that the powers in this case are special powers. We do not so read the opinion of the court. The chief concern of the court was to determine whether the power was one that the Wisconsin statute describes as "an absolute power of disposition." Sec. 232.08. The court held that it was not such a power and consequently there was no merger of estates. As we read the opinion, the court did not have squarely presented to it the question of whether the power

was general or special, and its statement as above quoted is dictum. The *Cawker* case appears to be the only one reported to-date that at all purports to touch upon the question here involved. In view of the fact that the precise question we have was not before the Wisconsin court in the *Cawker* case, we think the quoted words should not be taken as decisive, especially as they appear to be out of harmony with the decisions of the New York courts construing their similar statute. Considering the powers in this case in the light of the language of the Wisconsin statute and the decisions of the New York courts above cited, we hold, as set out above, that the powers were general and that the property passing thereunder is includable in gross estate.

Decision will be entered under Rule 50.

v. 21.

93

UNITED STATES BOARD OF TAX APPEALS.

* * (Caption—82771) * *

NOTICE OF PROPOSED REDETERMINATION.

Filed Nov. 21, 1937.

Notice is given that the Commissioner of Internal Revenue by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, will present the attached proposed redetermination of the estate tax liability in the above-entitled proceeding, under the decision of the Board of Tax Appeals promulgated September 30, 1937, on _____ under Rule 50 of the Rules of Practice before the United States Board of Tax Appeals.

This notice of proposed redetermination is submitted in accordance with the decision of the Board, without prejudice to the Commissioner's right to contest the correctness of the decision pursuant to the statute in such cases made and provided.

(Signed) J. P. Wenchel,
J. P. Wenchel,

Chief Counsel, Bureau of Internal
Revenue.

Of Counsel:

Frank T. Horner,
Ralph F. Steubly,

Special Attorneys, Bureau of
Internal Revenue.

RFS/rb 11/24/37

94 MT-ET-3099-Wisconsin
Estate of Elizabeth S. Morgan
Date of death—May 3, 1933

Recomputation of Estate Tax Liability in Accordance With
the Decision of the Board of Tax Appeals Promulgated Sep-
tember 30, 1937. Docket No. 82771.

Net estate as shown by Bureau letter dated No-
vember 12, 1935. (1926 Act) \$479,067.86

Net estate as shown by Bureau letter dated No-
vember 12, 1935 (1932 Act) 529,067.86

Less:

Decrease in value of 2,000 shares of
the Stephenson Redwood Co., de-
scribed in Bureau 30-day letter of
July 6, 1935 as item-6 under stocks,
being a part of the corpus of the
Isaac Stephenson Trust (gross de-
crease in value of stock \$269,960.06)

Decrease in decedent's 1/8th inter-
est \$33,745.01

Allowance of executor's commissions 2,185.64

Allowance of attorney's fees 2,785.12 38,715.77

Net estate (1926) as determined in accordance with
Board of Tax Appeals' decision 440,352.09

Net estate (1932) as determined in accordance
with Board of Tax Appeals' decision 490,352.09

Adjusted tax liability:

Gross tax (1926 Act) 14,517.60

Credit for State estate, inheritance, legacy, or
succession taxes 0.00

Net tax (1926 Act) 14,517.60

Total gross tax (1926 and 1932 Acts) 47,745.77

Gross tax (1926 Act) 14,517.60

Additional tax (1932 Act) 33,228.17

Net tax (1926 Act) 14,517.60

Total net tax 47,745.77

Amount assessed on return 8,800.89

Deficiency \$ 38,944.88

No allowance is made for credit on account of State estate, inheritance, legacy, or succession taxes paid, for the reason that the evidence required under Article 9, Regulations 80, has not been submitted.

If the full eighty per cent credit is allowed, the net deficiency tax will be \$27,330.80.

CKM/ofk

UNITED STATES BOARD OF TAX APPEALS.

• • (Caption—82771) • •

MOTION.

Filed Nov. 1, 1937.

Now Comes the Petitioner, by Arthur M. Kracke, his Counsel, and moves for an order by the Chairman of this Board to submit for review by the entire Board, the opinion promulgated in this cause on September 30, 1937.

In support of this motion it is stated that the final order fixing the amount of tax deficiency has not been made. It is provided in said opinion that final decision will be made under Rule 50.

The opinion was rendered by one member of the Board as the opinion bears no legend that it was "Reviewed by the Board."

96 The case of *Cawker v. Dreutzer* (221 N. W. 401) on which the petitioner relies is a Wisconsin Supreme Court decision on the question of general and special powers of appointment and was cited with approval by the Board of Tax Appeals in the case of *Helmholz v. Commissioner* (28 B. T. A. 165-175).

In the concluding paragraph of the opinion in this cause the Board rejects the determination of the Court in *Cawker v. Dreutzer* because they appear to be out of harmony with the decisions of the New York Courts construing their similar statute.

Arthur M. Kracke,
Arthur M. Kracke,
Counsel for Petitioner.

Dated: Oct. 30/37.

97

UNITED STATES BOARD OF TAX APPEALS.

Entered Nov.
1937.

• • (Caption—82771) • •

ORDER DENYING REVIEW BY THE ENTIRE BOARD.

On September 30, 1937, Division decision was promulgated in this proceeding and on October 30, 1937, petitioner filed a motion for review by the entire Board of the above mentioned decision.

Petitioner's motion has been carefully read and considered, as well as the entire record in the proceeding and it is not believed that petitioner's motion should be granted.

Accordingly, petitioner's motion for review by the entire Board is hereby Denied.

(Signed) Eugene Black,
Chairman.

Dated: Washington, D. C., November 10, 1937.

98

UNITED STATES BOARD OF TAX APPEALS.

Entered Dec.
1937.

• • (Caption—82771) • •

DECISION.

This proceeding having been called from the Day Calendar of December 15, 1937, for hearing on respondent's notice of proposed redetermination under Rule 50, and there being no objection entered by the petitioner to the respondent's proposal, in accordance therewith, it is

Ordered and Decided: That there is a deficiency in estate tax in the amount of \$38,944.88.

(S) C. R. Arundell,
Member.

(Seal)

Entered Dec. 17, 1937.

UNITED STATES BOARD OF TAX APPEALS.

• • (Caption—82771) • •

NOTICE OF FILING PETITION FOR REVIEW.

Filed March 9, 1938.

To: John P. Wenchel, Chief Counsel,
Bureau of Internal Revenue,
Washington, D. C.

Please take notice that the Petitioner, on the 9th day of March, 1938, filed with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a Petition for Review by the United States Circuit Court of Appeals for the Seventh Circuit, of a decision of the said Board heretofore rendered in the above entitled cause. A copy of the Petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated at Chicago, Illinois, this 9th day of March, 1938.

Respectfully:

Davis & Kracke,
Davis & Kracke,
209 S. La Salle St.,
Chicago, Illinois.

Miriam L. Frye,
Miriam L. Frye,
First National Bank Bldg.,
Oshkosh, Wis.,
Counsel for Petitioner.

107 Personal service of the foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein is hereby acknowledged this 9th day of March, 1938.

J. P. Wenchel,
Chief Counsel, Bureau of Internal Revenue.

99

UNITED STATES BOARD OF TAX APPEALS.

• • (Caption—82771) • •

Filed Mar.
1938.

**PETITION FOR REVIEW BY THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT OF A DECISION BY THE UNITED STATES
BOARD OF TAX APPEALS, FILED DECEMBER 17,
1937.**

Filed March 9, 1938.

The Taxpayer, J. Earl Morgan, Executor of the Estate of Elizabeth S. Morgan, Deceased, the petitioner in this cause, by Davis & Kracke and Miriam L. Frye, counsel for said petitioner, hereby files his petition for a review by the United States Circuit Court of Appeals for the Seventh Circuit, of a decision by the United States Board of Tax Appeals rendered on December 17, 1937, determining deficiencies of estate tax in the amount of \$38,944.88, and respectfully shows:

100

1.

J. Earl Morgan, (hereinafter referred to as petitioner) is an individual, duly appointed Executor of the Estate of Elizabeth S. Morgan, Deceased, on the 6th day of June 1933, by the County Court of Winnebago County, State of Wisconsin. The decedent, Elizabeth S. Morgan, was at the time of her death a citizen of the United States of America and a resident of the City of Oshkosh, Winnebago County, State of Wisconsin. The Executor, J. Earl Morgan, was at the time of the decease of Elizabeth S. Morgan and for many years past and is at the present time a citizen of the United States of America and a resident of the City of Oshkosh, Winnebago County, State of Wisconsin, which said City, County and State is within the jurisdiction of the United States Circuit Court of Appeals for the Seventh Circuit. The Commissioner of Internal Revenue, (hereinafter referred to as respondent) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States. The federal estate tax return of the petitioner was filed with The United States Collector of Internal Revenue for the District of Wisconsin with offices at Milwaukee, Wisconsin on April 30, 1934, which

said collector's office is within the Seventh Circuit of the United States Circuit Court of Appeals.

101

II.

This controversy involves the proper determination of the petitioner's liability for Federal Estate Tax on the Estate of Elizabeth S. Morgan, Deceased. Decedent died on May 3, 1933 and J. Earl Morgan was duly appointed Executor of the said estate on June 6, 1933.

Isaac Stephenson, the father of the decedent, while a resident of the State of Wisconsin, on May 12, 1917, executed a certain deed of trust to J. A. Van Cleve and others, as trustees, in and by the terms of which trust instrument Elizabeth S. Morgan was granted power to appoint, if she died prior to the termination of said trust, by her last will and testament, the person or persons to whom the income and principal of the trust estate at its termination should be paid, and failing to so appoint or, making such appointment and failing to dispose of all the income and principal subject to appointment, then income and principal or part remaining of trust set apart for her, to be paid to her surviving issue. If no issue should survive Elizabeth S. Morgan, and she should make no appointment, then the income and principal of her part of the trust estate shall be distributed among the other then existing parts.

Isaac Stephenson also executed, declared and published a last will and testament on June 15, 1916, together with three codicils dated respectively on June 21, 1916, January 16, 1917 and May 15, 1917. Isaac Stephenson died March 15,

1918 and his will and codicils were admitted to probate 102 in Wisconsin. In and by the terms of said will and testament, the testator created a trust of certain property, and gave, devised, and bequeathed to the appointee or appointees of Elizabeth S. Morgan, by her last will and testament, all property remaining at the time of her death in her share of the trust estate created under the said will of Isaac Stephenson and provided that should Elizabeth S. Morgan die, leaving issue her surviving and by her will and testament fail to appoint a person or persons to receive the income and principal of her share of the trust estate, then the income during the term of the trust and the principal at the expiration of the trust should be paid to her issue from time

to time her surviving, per stirpes, and if all her issue should die before the termination of the trust and in the absence of any appointment made by her, then trustees are directed to distribute her share of the trust estate, equally, among Isaac Stephenson's remaining trust parts. If Elizabeth S. Morgan should die without leaving issue and without having appointed a person or persons to receive all the property remaining at her death, then her share of the trust estate should cease to exist and be distributed equally among the remaining existing parts in accordance with the provisions of said trust.

Elizabeth S. Morgan died after her father and before the termination of both the said trust created by trust instrument on May 12, 1917 and the said trust created under the said will of Isaac Stephenson. By her last will and testament she exercised the powers of appointment above set forth. The Commissioner of Internal Revenue determined that both the said powers of appointment were general powers of appointment and that the property passing thereunder was includable in the decedent's gross estate under Section 302 (f) of the Revenue Act of 1926 as amended by Section 803 (b) of the Revenue Act of 1932.

The taxpayer contended, that by reason of and within the purview of the statutes of the State of Wisconsin defining general and special powers, the powers granted were special and not general and therefore the property passing under the said powers should not be included in the gross estate of the decedent. The United States Board of Tax Appeals sustained the Commissioner's determination.

III.

The taxpayer being aggrieved by the conclusions of law contained in the opinion of the Board of Tax Appeals and by its decision entered pursuant thereto, desires to obtain a review by the United States Circuit Court of Appeals for the Seventh Circuit.

IV.

The petitioner assigns as error the following acts and omissions of the said Board of Tax Appeals.

1. The United States Board of Tax Appeals erred in sus-

taining the determination of the Commissioner of Internal Revenue that the powers of appointment under the trust instrument of May 12, 1917 and under the trust created by the will of Isaac Stephenson were general and not special.

2. The United States Board of Tax Appeals erred in sustaining the determination of the Commissioner of Internal Revenue by including in the gross estate of Elizabeth S. Morgan, deceased, for federal estate tax purposes, the property over which decedent was given powers of appointment by trust instrument of May 12, 1917 and under the will and codicils of Isaac Stephenson.

3. The United States Board of Tax Appeals erred in its opinion and decision entered pursuant thereto, that the powers of appointment, granted to Elizabeth S. Morgan by Isaac Stephenson, in his trust instrument of May 12, 1917 and under his will and codicils, were general and not special within the purview of the Statutes of the State of Wisconsin.

4. The United States Board of Tax Appeals erred in its opinion and decision entered pursuant thereto, in refusing to follow the decision of the Supreme Court of the State of Wisconsin, construing the Statutes of the State of Wisconsin concerning powers of appointment.

5. The opinion and decision entered pursuant thereto by the United States Board of Tax Appeals is not supported by the evidence submitted.

6. The opinion and decision entered pursuant thereto by the United States Board of Tax Appeals is contrary to the evidence submitted and the law applicable thereto.

7. The United States Board of Tax Appeals erred in its decision by determining a deficiency in federal estate tax in the amount of \$38,944.88.

Davis & Kracke,
Davis & Kracke,
209 S. La Salle St.,
Chicago, Ill.

Miriam L. Frye,
Miriam L. Frye,
812 First National Bank Bldg.,
Oshkosh; Wis.

State of Illinois, }
County of Cook. } ss.

Arthur M. Kracke, being first duly sworn, says that he is one of the counsel of record in the above entitled case; that as such counsel he is authorized to verify the foregoing petition for review; that he has read the said petition and is familiar with the statements contained therein; and that the statements made are true to the best of his knowledge and belief.

Arthur M. Kracke.

Subscribed and sworn to before me this 7 day of March, 1938.

(Seal)

Alvin V. Nygren,
Notary Public.

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UNITED STATES BOARD OF TAX APPEALS.
• • (Caption—82771) • •

Filed Mar.
1938.

PRAECIPE FOR RECORD.

Filed Mar. 9, 1938.

To the Clerk of the United States Board of Tax Appeals:

1. The docket entries of all proceedings before the Board of Tax Appeals.
2. Pleadings before the Board of Tax Appeals:
 - (a) Petition for redetermination, including exhibits attached and Commissioner's notice of deficiency.
 - (b) Answer of the respondent.
3. Stipulation of Facts including Exhibit 1.
4. Opinion of Board of Tax Appeals promulgated September 30, 1937.
5. Notice of proposed redetermination and recomputation attached.
6. Decision of Board of Tax Appeals entered December 17, 1937.
- 109 7. Motion for review by the entire Board.
8. Order denying review by the entire Board.
9. Petition for Review, together with proof of service of

Certificate of Clerk.

notice of filing petition for review and of service of a copy of petition for review.

10. This praecipe.

Davis & Kracke,
Davis & Kracke,
209 S. La Salle St.,
Chicago, Ill.
Miriam L. Frye,
Miriam L. Frye,
First National Bank Bldg.,
Oshkosh, Wis.

Counsel for Petitioner on Review.

Service of a copy of the above praecipe is hereby admitted this 9th day of March, 1938.

No objection is made thereto.

J. P. Wenchela,

Counsel for Respondent on Review.

UNITED STATES BOARD OF TAX APPEALS.

• • (Caption—82771) • •

CERTIFICATE.

I, B. D. Gamble, Clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 111, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal (or appeals) as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 17th day of March, 1938.

B. D. Gamble,

Clerk,

United States Board of Tax Appeals.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 106, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the fifth day of May, 1938, upon which the following entitled cause was heard and determined:

J. Earl Morgan, Executor of the Estate of Elizabeth
S. Morgan, Deceased, *Petitioner,*

vs.

Commissioner of Internal Revenue,
Respondent.

No. 6611, October Term, 1938 as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 2nd day of May, A. D. 1939.

Frederick G. Campbell,

(Seal)

*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of appeals for the Seventh Circuit, held in the City of Chicago and begun on the fifth day of October, in the year of our Lord one thousand nine hundred and thirty-seven, and of our Independence the one hundred and sixty-second.

J. Earl Morgan, Executor of the
Estate of Elizabeth S. Morgan,
Deceased,

Petitioner,

6611

vs.

Commissioner of Internal
Revenue,

Respondent.

Petition for Review of
Decision of the United
States Board of Tax
Appeals.

And, to-wit: On the first day of April, 1938, there was filed in the office of the Clerk of this Court, an appearance of counsel for Petitioner, which said appearance is in the words and figures following, to-wit:

UNITED STATES-CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6611.

October Term, 1937.

J. Earl Morgan, Executor, etc.,

vs.

Commissioner of Internal Revenue.

The Clerk will enter our appearance as counsel for Petitioner.

Bröde B. Davis,
Arthur M. Kracke,
209 So. La Salle St.,
Chicago, Illinois.

Endorsed: Filed April 1, 1938. Frederick G. Campbell, Clerk.

Appearance for Respondent.

And afterwards, to-wit: On the fourth day of June, 1938, there was filed in the office of the Clerk of this Court, an appearance of counsel for Respondent, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 6611.

October Term, 1937.

J. Earl Morgan, Executor, etc.,

vs.

Commissioner of Internal Revenue.

The Clerk will enter my appearance as counsel for Respondent.

J. P. Wenchel,

*Chief Counsel, Bureau of
Internal Revenue.*

Frank T. Horner,

*Special Attorney, Bureau of
Internal Revenue.*

Endorsed: Filed June 4, 1938; Frederick G. Campbell,
Clerk.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the fourth day of October, in the year of our Lord one thousand nine hundred and thirty-eight, and of our Independence the one hundred and sixty-second.

And to-wit: On the eleventh day of November, 1938, the following further proceedings were had and entered of record, to-wit:

Friday, November 11, 1938.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. Walter E. Treanor, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

J. Earl Morgan, Executor, etc., 6611 <i>vs.</i> Commissioner of Internal Revenue.	}	Petition for Review of Decision of the United States Board of Tax Appeals.
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Now this day come the parties by their counsel and this cause comes on to be heard on the transcript of the record and briefs of counsel and on oral argument by Mr. Brode B. Davis, counsel for Petitioner, and by Mr. Berryman Green Counsel for Respondent, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the twenty-second day of April, 1939, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

No. 6611.

October Term, 1938, April Session, 1939.

J. EARL MORGAN, Executor of the Estate
of Elizabeth S. Morgan, Deceased,

Petitioner,

vs.

COMMISSIONER OF INTERNAL
REVENUE,

Respondent.

Petition for Review of
Decision of the United
States Board of Tax
Appeals.

April 22, 1939.

Before EVANS and TREANOR, *Circuit Judges*, and LINDLEY,
District Judge.

TREANOR, *Circuit Judge.* Petitioner seeks a review of a decision of the United States Board of Tax Appeals affirming the determination by the Commissioner of Internal Revenue of a deficiency in the estate tax liability of the estate of decedent, Elizabeth S. Morgan. The asserted deficiency resulted from the inclusion in the value of the gross estate of decedent the value of certain property in respect to which the decedent held powers of appointment, which powers she had exercised by her last will.

The Commissioner's action was predicated upon the following provisions of the Revenue Act:¹

"Sec. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—

"(f) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will"

The decedent died testate in 1933 while a citizen of the United States and a resident of the state of Wisconsin, and

1. Sec. 302(f) Revenue Act of 1926, as amended by Sec. 803(b) of the Revenue Act of 1932, 28 U. S. C. A. Sec. 411.

the petitioner is the duly appointed executor of her last will and testament. Decedent's father, by his will and several codicils thereto, created a trust for the benefit of his children. The trust estate was divided into nine parts, the part numbered five being conveyed in trust for decedent's benefit as follows:

"Item Fifteen: I direct said trustees to pay to my daughter Elizabeth S. Morgan annually the net annual income from part numbered five (5) into which my trustees shall have divided my estate * * *

"I give, devise and bequeath to the appointee or appointees of my daughter Elizabeth S. Morgan by her last will and testament all property of any nature and kind in the hands of my said trustees at the time of her death constituting said part five (5) * * *"

Shortly before his death the father of decedent executed a deed of trust to continue for a period of 21 years after his death. The trust property was divided into parts and one part was allocated to each beneficiary. The following provisions of the deed of trust relate to decedent:

"7. After my death and during the continuance of the trust hereby created, said Trustees shall pay annually to my daughter Elizabeth S. Morgan the net annual income from said part numbered five (5).

"If my daughter Elizabeth S. Morgan shall be living at the time of the termination of this trust, said Trustees shall transfer to her all property then in their possession constituting said part five (5).

"If my daughter Elizabeth S. Morgan shall die prior to the termination of said trust, then said Trustees shall pay annually the net annual income from said part five (5) to such person or persons as she may appoint by her last will and testament duly admitted to probate, and at the termination of this trust said Trustees shall transfer the property then in their possession constituting said part five (5) to such person or persons as she may appoint in the manner aforesaid."

In her will decedent exercised the powers of appointment granted by her father's will and by the deed of trust, respectively, the appointments being in the following words:

"Twenty-second: Under the last will and testament of my father * * * I do hereby nominate, constitute, authorize, and appoint my husband, J. Earl Morgan * * *

"Twenty-third: Under the Deed of Trust dated May 12, 1917, * * * I do hereby appoint my husband, J. Earl Morgan * * *"

It is not questioned that under the law of Wisconsin the property, which the Commissioner included in decedent's estate under authority of Section 302 (f), passed to decedent's appointee by virtue of the exercise of the powers of appointment. Section 302 (f) selects a particular type of transmission of property through a power of appointment, a type of transmission which is essentially a testamentary disposition, and treats such transmission as a transfer of estate property of the decedent who exercises the power of appointment. In the instant case the decedent had the income of the trust property during her life with the right ultimately to receive the corpus; and under the powers of appointment she had full power to dispose of all of her property interest after her death to whomsoever she might select as her appointee, or appointees. She exercised her powers of appointment by will and under the law of Wisconsin all of the interest which she had in the property passed to her appointee. Consequently, the precise question for decision by this Court is whether the powers of appointment were general powers within the meaning of that term as used in Section 302 (f) of the Revenue Act of 1926, as amended.

It is petitioner-appellant's contention (1) that powers of appointment granted in language substantially the same as that used in the grants in the instant case have been held to be special powers by the Supreme Court of Wisconsin; and (2) that those decisions apply to the facts in the instant case and require the conclusion that the powers in question are special powers, and a holding that the property passing from decedent under her exercise of the powers was improperly included by the respondent, Commissioner, in decedent's gross estate. The foregoing contention presupposes that the language which grants the powers in the instant case must be tested by the definitions of general and special powers recognized by the law of Wisconsin.

The term "general power of appointment" has a well defined legal meaning. Ordinarily it designates a power to appoint any person or persons in the discretion of the donee of the power; and a power of appointment is general regardless of the extent of the property interest which is transferred by the exercise of the power. It is the limitation on the discretion of the donee in the selection of the appointee, or appointees, that distinguishes a special power of appointment from a general. By Treasury Regulation the former meaning of general power of appointment is adopted.

The following definition has been uniformly recognized

by federal courts as a correct statement of the meaning of "general power" as that term is used in the Revenue Act:

"A power of appointment is general when it is exercisable in favor of any person the donee may select, and special or limited when it is exercisable only in favor of persons or a class of persons designated in the instrument creating the power * * *"

We accept the foregoing definition of general power of appointment for the purpose of applying Section 302 (f). The language which creates and grants the powers in the instant case places no restriction on the discretion of the grantee of the powers in respect to the selection of an appointee, or appointees. The language of the grants left the grantee free to exercise the powers of appointment in favor of any person whom she might select. In our opinion the powers were general powers within the meaning of Section 302 (f) of the Revenue Act, and must be treated as such for purposes of this case unless some rule of Wisconsin law controls, as against Section 302 (f), and requires a different result.

The Wisconsin case chiefly relied upon by petitioner is *Cawker v. Dreutzer*.³ In the course of the opinion the Wisconsin Supreme Court stated that the power of appointment which was under consideration and which was granted in language substantially the same as the language used in the instant case was, by statutory definition, a special and not a general power.⁴ The court stated that the power "is a special power * * * because it embraces an interest less than a fee." Respondent-appellee contends that the foregoing statement of the Supreme Court of Wisconsin was dictum. But granting that the statement expressed a holding, the significance of such a holding, for our present purposes, is that under the Wisconsin law the powers of appointment created by the language used in the will and deed herein involved embrace interests less than fees and are therefore, by statutory definition, special powers. But

2. *Johnstone v. Commissioner*, 76 Fed. (2d) 55 (Certiorari denied 206 U. S. 578).

3. 197 Wis. 98.

4. Statutes of Wisconsin, 1937, Sec. 232.05. "General Power. A power is general when it authorizes the alienation in fee, by means of a conveyance, will, or charge of the lands embraced in the power, to any alienee whatever."

232.06. "Special Power. A power is special: (1) When the person or class of persons to whom the disposition of the lands under the power to be made are designated. (2) When the power authorizes the alienation by means of a conveyance, will, or charge of a particular estate or interest less than a fee."

such a power satisfies the definition of a general power as that term is used in Section 302 (f), even though it is characterized as a special power under statutory provisions in Wisconsin.

Petitioner relies on *Leser v. Burnet, Commissioner*,⁵ for a holding that state law determines whether a power is general for federal taxation purposes. In that case decedent exercised a power of appointment and the question was whether the property passing under such exercise should be included in decedent's gross estate for the purpose of computing the federal estate tax. The Circuit Court of Appeals first determined, independently of any local statute or court decisions, the meaning of "general power" as used in the Revenue Act, and held that a general power "is one which may be exercised by the donee of the power in favor of any person whomsoever including the donee himself or his own creditors." The court then said that it was necessary to determine whether the power "is a general power within this meaning of the act of Congress"; and stated that this was to be determined by the law of Maryland. The court then pointed out that in Maryland such grants of power as the one in question were construed strictly, and that unless the language of the grant of power expressly states that the donee may exercise the same for his own benefit or for the benefit of his creditors, then the power does not include the right so to be exercised. And since the grant of power did not expressly so state, the court held that the power did not come "within the meaning of the general power of appointment as that term is used within the Revenue Act." Clearly the court recognized that the definition of a general power for purposes of the Revenue Act is not dependent on state law but is a matter of federal law. The Court considered state law only for the purpose of determining whether the effect of this law upon the language in the grant of power so limited the grant that it did not come within the congressional standard of a general power.

In *Burnet v. Harmel*⁶ the United States Supreme Court uses the following language:

"For the purpose of applying this section to the particular payments now under consideration, the Act of Congress has its own criteria, irrespective of any particular characterization of the payments in the local law. The state law creates legal interests but the

5. 46 Fed. (2d) 750.

6. 287 U. S. 103.

federal statute determines when and how they shall be taxed. We examine the Texas law only for the purpose of ascertaining whether the leases conform to the standard which the taxing statute prescribes
• • •

It is evident that in *Leser v. Burnet*, *supra*, the Circuit Court of Appeals was applying the rule implied in the foregoing statement of the Supreme Court. But the application of that principle cannot aid petitioner's cause in the present case since petitioner's position is that the standard is created and defined by state law. For petitioner to bring his cause within the reasoning and decision of *Leser v. Burnet* it would be necessary to show that the standard created by the federal law was not met in substance and in fact for the reason that under the Wisconsin law the language of the grant of power did not create a power which meets the standard prescribed by the taxing statute for a *general power*.

A recent decision of the Supreme Court in the case of *Lyeth v. Hoey* is in point. In that case the taxpayer was an heir of the decedent whose will had been offered for probate in Massachusetts. The taxpayer began proceedings to contest the probate of the will on certain named grounds. A compromise agreement was thereupon entered into between the taxpayer and the legatee of the bulk of the estate, by the terms of which compromise the taxpayer received certain cash and property. The Commissioner assessed the value of the taxpayer's receipts under the compromise as income. The taxpayer filed suit for a refund, relying upon Section 22 (b) (3) of the Revenue Act of 1932 which exempts from income tax "the value of property acquired by • • • inheritance • • •". The United States Circuit Court of Appeals for the Second Circuit declared the rule to be that whether the property was received by way of inheritance or otherwise depended on the law of the jurisdiction under which the taxpayer received it; and that under the Massachusetts decisions the taxpayer received the property by purchase and not by inheritance. The Supreme Court reversed the judgment of the Circuit Court of Appeals and held that the application of the Massachusetts rule was erroneous.

While recognizing that state law determines the rules, both substantive and procedural, relating to descent and distribution of property within the jurisdiction, the Supreme Court held that in case of receipt of property by an

heir as a result of a compromise it is a federal question "whether what the heir has thus received has been 'acquired by inheritance' within the meaning of the federal statute * * *"

In harmony with the reasoning and holding in *Lyeth v. Hoey*, *supra*, we hold that in the instant case it is a question of federal law whether the property in question passed under a general power within the meaning of Section 302 (f). Consistently with the implications of *Lyeth v. Hoey*, *supra*, and the holding in *Leser v. Burnet*, *supra*, we examine the law of Wisconsin to determine the scope of the powers granted by the language of the will and deed of trust and whether the property in question legally could be transferred by the exercise of the powers. But the scope of the powers having been determined, their generality for purposes of Section 302 (f) is measured by the definition of "general power" recognized by federal law.

Congress can adopt as a part of federal law rules and standards recognized by local law; but such adoption must be indicated by express declaration or necessary implication. But we find no indication of congressional intention to adopt local definitions of "general power of appointment" and thus create diversity of administration of Section 302 (f).⁸

Petitioner urges that even if the language of the grant of powers is sufficient to create general powers their generality is destroyed by certain provisions of the will and the deed of trust which petitioner contends create a right of veto of an appointment which might be made under the powers. This contention is not based upon any doctrine peculiar to the law of Wisconsin but upon petitioner's construction of the language of the provisions.

The clauses of the will and trust deed relied upon by petitioner provide that whenever in the judgment of the trustees there is danger that anything "coming to any beneficiary under this trust (or will)" will be dissipated through intemperate or spendthrift habits, lack of business

8. "Congress establishes its own criteria and the state law may control only when the federal taxing act by express language or necessary implication makes its operation dependent upon state law. * * * There is no such expression or necessary implication in this instance. Whether what an heir receives from the estate of his ancestor through the compromise of his contest of his ancestor's will should be regarded as within the exemption from the federal tax should not be decided in one way in the case of an heir in Pennsylvania or Minnesota and in another way in the case of an heir in Massachusetts or New York, according to the differing views of the state courts. We think that it was the intention of Congress in establishing this exemption to provide a uniform rule." *Lyeth v. Hoey*, *supra*.

capacity or subjection to injurious influences of others, or for any other reason, the trustees may withhold from such beneficiary as much as they deem advisable and pay and transfer as much as they deem advisable. Instead of doing the latter the trustees were authorized to expend the funds for the welfare and support of such beneficiary.

Petitioner construes "any beneficiary under this trust (or will)" to include appointees and insists that the power of the trustees to withhold income or installments of corpus from "unworthy beneficiaries" amounts to a veto of the power of appointment of decedent. But we are convinced that a reasonable construction of the language of the so-called *veto* clauses, in the light of related provisions of the will and deed of trust, precludes the inclusion of "appointee" in the term "any beneficiary."

Many carefully worded provisions both of the will and deed indicate clearly that decedent's father intended to differentiate between "beneficiaries" under his will and deed and "appointees" under the wills of his children to whom he had granted powers of appointment. The provisions in the deed of trust which dispose of property or income which is withheld from any "unworthy beneficiary" provide that the property or income shall be transferred to such issue of the unworthy beneficiary as would have taken the property so withheld "in case such unworthy beneficiary had died intestate at the time of such withholding;" and it is further required that in the event there should be no such issue at the time any such property should be payable or transferable, "then such trustee shall pay and transfer and distribute such property so withheld to and among the then other existing remaining parts." It will be noted that the withheld property is to go to the issue of the unworthy beneficiary who would have received it had the unworthy beneficiary died *intestate*. The trustor thus eliminated any appointee under the will of the unworthy beneficiary from participation in "withheld" property, and excluded any such appointee from the class of potential "worthy beneficiaries" under the trust. In the case of a named beneficiary with power of appointment, such as the decedent, who dies intestate, the trust deed provides that when installments of net annual income shall be payable such installments shall be paid to issue then surviving, and that at the termination of the trust the trustees shall transfer all property then in their possession to the then surviving issue of the named beneficiary. Thus the trust instrument designates the class of persons who will consti-

tute "worthy beneficiaries" for the purpose of receiving any payments which are withheld by the trustees from named unworthy beneficiaries. But there are no provisions in the trust deed which control the disposition of any appointee's interest in the trust property in case such appointee should die intestate.

Apt provisions in the will of the father of decedent provide for the disposition of the portion of each *named* beneficiary in case the named beneficiary should die without having exercised the power of appointment. But there is no language which purports to exercise any control over the property when it has passed to an appointee as a result of the exercise of the power of appointment. The provisions of the will which control the disposition of property or income withheld from an "unworthy beneficiary" require the same to be paid or transferred "to such other worthy beneficiary *under my will* who would have been entitled thereto in case such unworthy beneficiary had died." (our italics) But if an "appointee" is to be considered a beneficiary under the will of the father of decedent the trustees cannot identify the "worthy beneficiaries" under the will who are to receive withheld payments until the death of an "unworthy beneficiary" who holds a power of appointment. This follows from the fact that by the terms of the will the issue of a named beneficiary, who holds a power of appointment, receives the beneficiary's property interest in the testamentary trust only in case such beneficiary does not exercise his power of appointment in his will. And this cannot be determined until the death of the named beneficiary. Obviously the intent of the testator, as expressed in the terms of the testamentary trust, was that the trustees be able to select the worthy beneficiaries at the time that payments should be withheld from named unworthy beneficiaries, which could not be done if appointees were treated as beneficiaries under the will.

By the terms of the testamentary trust a named beneficiary who holds powers of appointment is entitled not only to payment of income but also to distribution of designated portions of principal at stated intervals over a period of sixteen years. But an appointee is entitled to the immediate possession and enjoyment of all property in the hands of the trustees at the death of the beneficiary-appointee. The foregoing is inconsistent with an intention on the part of the trustor to apply the *veto* provisions to appointees, since such possession presupposes a period

during which the beneficiaries do not have possession and full enjoyment of the principal.

The father of decedent limited the grant of powers of appointment to his own children, both in the testamentary trust and the deed of trust, although in both the list of named beneficiaries included his wife, his own children, and his grandchildren. Furthermore, powers of appointment were not granted to all of his own children and in the case of some grantees the exercise of the power was conditioned upon the lack of issue at the time of the death of the grantee of the power. In the first paragraph of the deed of trust the trustor recites that it had been his observation that many widows and children had been unable to preserve the principal of the fortune they had inherited and that he desired to provide for the support of his wife and his children and grandchildren. In the testamentary trust there was also a declaration of desire to provide for trustor's wife and children and the issue of his deceased children. The provision authorizing the withholding of property from an "unworthy" beneficiary obviously is included to give effect to the foregoing desire of the trustor to assure financial security for his wife and for his children and their issue. There is nowhere in either trust instrument any indication of interest in the welfare of appointees or their issue. Having carefully chosen the grantees of powers of appointment, the testator evidenced no intention of controlling whatever property passed to any appointees.

In view of the foregoing we conclude that the so-called *veto* provisions do not authorize the trustees to withhold payments of income or installments of principal from appointees.

But even if it could be conceded that the provisions in question authorize the trustees to withhold payments from appointees, the possession of such discretionary power by the trustees does not qualify the general power of appointment of the named beneficiary. The trustees could not prevent the passing of the decedent's right in the trust property to any person appointed by the decedent, even though they might exercise some control over the enjoyment of the property by the appointee. As already stated, there is no provision in either the will or deed of trust which purports to control the descent of the property when once it has been vested in the appointee. The trustees have no control over the selection by a named beneficiary of an appointee; and the extent of the discretionary power of the trustee would be to interfere with an appointee's unrestricted enjoyment of the property.

We hold that the powers of appointment exercised by decedent under the trust and will of her father were general powers within the intent and meaning of Section 302 (f), and that the transmission of the property interests in question by the exercise of the powers of appointment by decedent constituted a "passing (of property) under a general power of appointment exercised by the decedent (1) by will . . ."

The decision of the Board of Tax Appeals is

AFFIRMED.

LINDLEY, District Judge, Concurring.

I am in accord with the conclusion reached, but it seems to me unnecessary to decide whether, under *Blair v. Comr.*, 300 U. S. 5 and *Lyeth v. Hoey*, 305 U. S. 188, decided Dec. 5, 1938 and other decisions of the Supreme Court, the character of the power involved is to be determined from consideration of the federal law alone, for I am of the opinion that under the laws of Wisconsin, also, the power was general in character. When it was exercised, the estate of the deceased, under the Wisconsin statutes, was augmented by the amount of property included in the devises and bequests as to which right of appointment existed. The state statute is as follows:

"232.05 General Power. A power is general when it authorizes the alienation in fee, by means of a conveyance, will or charge of the lands embraced in the power, to any alienee whatever."

"232.06 Special Power. A power is special: (1) When the person or class of persons to whom the disposition of the lands under the power to be made are designated; (2) When the power authorizes the alienation by means of a conveyance, will, or charge of a particular estate or interest less than a fee."

In asserting that the power involved is special in character, petitioner relies upon *Cauker v. Dreutzer*, 197 Wis. 98. That case concerned a power of appointment in favor of two daughters who were to have the income from the res for life with power of appointment by will. In default of such appointment, the issue of each daughter was to take her interest, and, if one of the daughters died without having exercised the power, the corpus of her interest was to pass to the other daughter, if surviving, or, if not, to that daughter's issue. One of the daughters filed a petition asking that her power be decreed to be general and her estate a fee. The time for exercise of the power had not

arrived. As I read the case, the point involved here was not decided. Any language indicating the conclusion urged by petitioner was unnecessary to the decision. The court refused to pass upon the daughter's request that she had the absolute power of disposition on the ground that the request was not presented to or considered by the trial court. The Supreme Court left the question open.

Here the time for exercise of the power has arrived and it has been executed. I find nothing in the decisions indicating that the Supreme Court of Wisconsin would construe it as other than general in character. Indeed, that court, in the opinion cited, took cognizance of the fact that the Wisconsin statute defining powers of appointment had been adopted from New York and said that it should have the same interpretation in Wisconsin as in New York. Under the New York decisions, such a power as is here being considered is general. *In re Lathers' Will*, 243 N. Y. S. 380; *Farmers' Loan & Trust Co. v. Shaw*, 107 N. Y. S. 337.

Furthermore the power of veto, if any can be attributed to the trustees, never having been exercised and the power to appoint having come to fruition, that is, the property having been disposed of under the power, it should be included in the gross estate of the deceased. To my mind the Wisconsin statute so indicates, and, in the absence of an authoritative decision to the contrary, the Board properly included the property passing under the power. The situation is akin to that where a vested remainder is created, subject to a life estate, and the life tenant has, coupled with his life estate, the power to dispose of the fee and thus defeat the remainder. Quite generally it is the law that such a power to divest the remainder does not prevent the latter from vesting immediately. *Burke v. Burke*, 259 Ill. 262; *Bradley v. Jenkins*, 276 Ill. 161; *Linn v. Campbell*, 289 Ill. 347.

Endorsed: Filed April 22, 1939. Frederick G. Campbell, Clerk.

And on the same day, to-wit: On the twenty-second day of April, 1939, the following further proceedings were had and entered of record, to-wit:

Saturday, April 22, 1939.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. Walter E. Treanor, Circuit Judge.

Hon. Walter C. Lindley, District Judge.

J. Earl Morgan, Executor of the
Estate of Elizabeth S. Morgan,
Deceased,

6611

vs.

Commissioner of Internal
Revenue.

Petition for Review of
Decision of the United
States Board of Tax
Appeals.

This cause came on to be heard on transcript of the record from the United States Board of Tax Appeals and was argued by counsel.

On Consideration Whereof: It is now here ordered and adjudged by this Court that the Decision entered in this cause on December 17, 1937, by the United States Board of Tax Appeals, be, and the same is hereby affirmed.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 109 to 124, inclusive, contain a true copy of the proceedings had and papers filed, excepting Briefs of counsel, and Stipulations and Order as to filing briefs, in the case of:

J. Earl Morgan, Executor of the Estate of Elizabeth
S. Morgan, Deceased,

Petitioner,

vs.

Commissioner of Internal Revenue,


Respondent,

No. 6611, October Term, 1938, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 2nd day of May, A. D. 1939.

(Seal)

Frederick G. Campbell,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*



SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

(4847)